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SECOND UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Geneva, 26 November 1990
Item 8 of the provisional agenda

REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(a) Review of ten years of application and implementation of the Set

(b) Consideration of proposals for the improvement and further development of the Set, including international co-operation in the field of control of restrictive business practices.

PREPARATIONS FOR A HANDBOOK ON RESTRICTIVE BUSINESS PRACTICES LEGISLATION

Handbook on Restrictive Business Practices Legislation

Note by the UNCTAD secretariat

best copy available

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INTRODUCTION

1. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, in section F.6 (c), provides for the compilation of a Handbook on Restrictive Business Practices Legislation.

2. The Intergovernmental Group of Experts on Restrictive Business Practices, in the agreed decisions and conclusions adopoted at its sixth session, requested the UNCTAD secretariat to continue compiling the Handbook, as carried out so far (in documents TD/B/RBP/33 and TD/B/RBP/42) taking into account the comments made by regional groups at the session. Further compilations of the Handbook are contained in documents TD/B/RBP/49 and TD/B/RBP/58 and Add.1 submitted to the seventh and eighth sessions of the Group, respectively.

3. At its eighth session, the Intergovernmental Group of Experts, in its agreed decisions and conclusions, requested the UNCTAD secretariat to prepare for the ninth session of the Group, as well as for the Review Conference, a further compilation of the Handbook on Restrictive Business Practices Legislation (TD/B/1236-TD/B/RBP/67, annex I).

4. Accordingly, the UNCTAD secretariat prepared a note submitted to the ninth session of the Group (document TD/B/RBP/71) which contains commentaries on and texts of restrictive business practices legislation of the Federal Republic of Germany and Finland.

5. The present note contains commentaries received from Denmark, Poland, Spain and the United States of America, and it reproduces in the annexes texts of the RBP laws of these countries, in the languages in which they were received.

6. Thus, to date, the UNCTAD secretariat has issued notes containing commentaries and texts of RBP legislation from the following countries: Canada, Chile, Denmark, the Federal Republic of Germany, Finland, France, Kenya, Pakistan, Poland, Portugal, the Republic of Korea, Spain, Sri Lanka, Sweden, and the United States of America.

7. It will be recalled that the Secretary-General of UNCTAD, in his note of 2 March 1988 (TD/B/420/8(6)), requested States which so far had not done so, or which had introduced new or amending RBP legislation since their last communication to the UNCTAD secretariat, to provide the UNCTAD secretariat with their relevant legislation, court decisions and comments, on the basis of the format supplied (see below). In order to facilitate the reproduction of texts of legislation in more than one official language of the United Nations, States were invited, as called for by the Intergovernmental Group, to submit, if possible, the text of their legislation in one or more other languages of the United Nations.

8. The UNCTAD secretariat is grateful to the Governments that have contributed the material requested for the compilation of the Handbook, and again requests States which have not yet done so, or which have amended or enacted new legislation since their last contribution, to supply texts of their legislation and commentaries along the lines of the format attached to the note of the Secretary-General of UNCTAD mentioned above, and reproduced below.

FORMAT FOR CONTRIBUTIONS TO THE HANDBOOK

A. Description of the reasons for the introduction of the legislation.

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation.

C. Description of the practices, acts or behaviour subject to control, indicating for each:

(a) The type of control, for example: outright prohibition, prohibition in principle, or examination on a case-by-case basis;

(b) The extent to which the practices, acts or behaviour in section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection, for example, controls concerning misleading advertising.

D. Description of the scope of application of the legislation, indicating:

(a) Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;

(b) Whether it applies to all practices, acts or behaviour having effects on that country, irrespective of where they are committed;

(c) Whether it is dependent upon the existence of an agreement, or of that agreement being put into effect.

E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements, and principal powers of body(ies).

F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving co-operation or procedures for resolving disputes in the area of restrictive business practices.

G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered.

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof.

A. COMMENTARY BY THE GOVERNMENT OF DENMARK ON THE COMPETITION ACT 1989

Statute No.370 of 7 June 1989

DANISH CONTRIBUTION TO THE HANDBOOK ON RESTRICTIVE PRACTICES LEGISLATION

The Danish Monopolies and Restrictive Practices Supervision Act 1955 (the Monopolies Act) and the Prices and Profits Act 1974 were repealed as from 1 January 1990 and replaced by a new Competition Act.

At the same time the Monopolies Control Authority was abolished and replaced by the Competition Council, which consists of a Chairman and 14 members. The members of the Council cover a comprehensive knowledge of commercial relations, including experience in legal, economic, financial and consumer-related matters. The Chairman and seven of the members must be independant of commercial interests.

A Secretariat consisting of about 110 officials is attached to the Council. The Competition Council is under the jurisdiction of the Ministry of Industry, but has an independent status, and decisions made by the Council cannot be appealed to the Minister of Industry.

The reason for the introduction of new legislation was a political request for a modernization of the competition law in the light of the national as well as international development of market structures and competitive conditions.

Like the Monopolies Act, the Competition Act is also based on principles of control and abuse, but in contrast to previous legislation which was characterized by defensive measures, i.e. abuse of market dominance should be prevented, the new Act has a more offensive aim. The purpose of the Competition Act is to promote competition and thus strengthen the efficiency of production and distribution of goods and services, primarily by means of transparency created, for instance, through publication of reports on investigations of the competitive conditions, prices, incomes, etc. of certain enterprises or associations, etc., and, accordingly, the need for regulatory measures against competition is considered to be less pronounced.

Unlike the preceding legislation, the Competition Act also applies to banking and mortgage credit business and to insurance activities.

Furthermore, the Act applies to business activities performed, or subject to control or approval, by public authorities. However, the intervention and penalty of the Act are not applicable to such activities, but the Competition Council may approach the competent authority concerned and point to the potentially harmful effects on competition. Such communication shall be published.

The right of public access to documents under the Competition Act is basically unrestricted, unless the request for access concerns information about technical matters, and unless public access is found to inflict a considerable financial loss on an enterprise or association, etc.

The Competition Act provides for the fundamental right of the enterprises to make agreements, etc. The powers to take measures against harmful effects of restrictive practices are subject to preceding investigation of the matter concerned, and it is only after the Competition Council has ascertain that a certain matter is in conflict with the law that it has the possibility to intervene. The only direct prohibition of the Act is laid down in section 14, according to which enterprises are not allowed to enforce binding prices or profits on subsequent resellers.

The Competition Council may demand any information, including accounts, transcripts from ledgers and other business records, which is considered necessary for its activities, and it can order an enterprise to submit information on prices, business conditions, etc. Furthermore, agreements and decisions by which a dominant influence is or may be exerted on a certain market are subject to notification to the Competition Council.

The Competition Act contains no rules on control as regards consumer protection. The legislation up till now on price marking and display, which was administered by the Monopolies Control Authority, has been amended, and as from 1 January 1991 the administration of the new Act will be transferred to another public authority, the National Consumer Agency of Denmark, which also attends to the control of misleading advertising, etc.

The Competition Act applies to all goods and services, and measures can be taken against anti-competitive practices, including agreements and decisions which entail or may entail harmful effects on competition or restraints of the freedom of trade.

The Act aims primarily at creating transparency as a means to promote a workable competition. As a secondary means, the Competition Council can take measures, such as an order for the termination of agreements, fixing of maximum prices and profits, stipulation of specified calculation rules to be observed, and an order to take up or resume supplies to specified buyers, always provided, however, that the Competition Council has attempted to terminate the harmful effects through preceding negotiation. Only if negotiation leads to nothing, is the Competition Council in a position to take such measures.

If a party neglects an obligation under the Act to make notification, submit information, etc., the Competition Council may, as a coercive measure, impose on the party concerned a daily or weekly fine; moreover, a fine can be imposed on any party who intentionally or by gross negligence infringes the provisions of the Act.

The decisions made by the Competition Council may be brought before the Competition Appeals Tribunal, which consists of a Chairman, who is qualified for the post as a Supreme Court Judge, and two other members who shall be proficient in economics and law, respectively. The decisions made by the Appeals Tribunal can be appealed to the High Court and further to the Supreme Court.

Besides the Competition Act, the Competition Council also attends to the administration of the Competitive Tendering Act 1966. The purpose of this Act is to create transparency in connection with the invitation and submission of bids within the building and construction sector, and to ensure equality of terms of the competitive conditions.

Furthermore, the Competition Council is the competent authority in Denmark as regards the application of the EC competition rules, and various tasks in that respect are imposed on the Council in pursuance of the Act on Control of Compliance with the EEC Regulations on Monopolies and Restrictive Practices 1972, and the Act on Control of the Observance of EEC Regulations No. 11/60 on Abolition of Discrimination as to Transport Prices and Transport Conditions 1972.

The new Competition Act was prepared in view of the growing internationalization of the markets, and internationally related matters are expected to increase. The EC relations imply that a number of responsibilities are placed under the Competition Council, such as participation in meetings of advisory committees and other EC institutions under the Council or Commission of the European Communities, and assistance to the EC Commission in connection with investigations of the competitive conditions in Denmark.

B. COMMENTARY BY THE GOVERNMENT OF POLAND ON THE LAW OF COUNTERACTING MONOPOLISTIC PRACTICES OF 24 FEBRUARY 1990

A. Reasons for introduction of the legislation

The Law of 1990 provides for the establishment of the Anti-Monopoly Office, for the control of monopolies and anti-competitive practices. It was introduced to protect economic subjects against monopolistic practices, to secure the interests of consumers and to help all producers and trade units operating on the market to compete freely with each other on the basis of quality and price.

B. Objectives of the legislation

The objectives of the legislation are:

1. to curb monopolistic practices and eliminate unfounded economic structures dominating on a given market,
2. to transform the subject structure not only according to the forms of property but also according to the size of the enterprises.
3. to ensure and protect competition.

C. Practices, acts or behaviour to control

Monopoly situations, merger situations and anti-competitive practices are not prohibited outright or in principle but are subject to examination on a case-by-case basis and are subject to control when they operate against the public interest.

The definition of monopolistic position for the purpose of the Law is if an economic subject does not encounter competition on the internal or local market. The Law prohibits also the exploitation of a dominant position which is defined as existing when a producer does not encounter substantial competition on the internal or local market, i.e. when the producer's market share is in excess of 30 per cent.

The following are considered as monopolistic practices:

1. forcing onerous terms which yield the economic subject undue benefits,

2. making the conclusion of a contract contingent on performance by the other party of another service not connected with the object of the contract, which would not otherwise be agreed if there was a choice,

3. acquiring shares or stocks of companies or assets of economic subjects, when such aquisition could lead to a significant weakening of competition,

4. having the same person combine the functions of director, member of the board, supervisory council or audit commission in competing economic subjects when at least one of the subjects controls more than 10 per cent of the market.

The full scope of the monopolistic practices is contained in Chapter 2, articles 4-7 of the Law.

D. Description of the scope of application of the legislation

This Law applies to all individuals, corporate bodies and organizational units without corporate status conducting an economic activity. The Law applies also to chambers, associations and other organizations associating economic subjects.

The rules cover licence contracts and all arrangments in contravention of this Law.

E. Description of enforcement of the machinery

This Law is enforced by the Anti-Monopoly Office, which is established as a central state administration body charged with counteracting monopolistic practices, and subordinate to the Council of Ministers.

The Anti-Monopoly Office is headed by a President (appointed and recalled by the Prime Minister) and a Vice President.

The President of the Anti-Monopoly Office may establish branch offices headed by directors of these offices.

The scope of duties of the Anti-Monopoly Office covers:

1. supervising the observance of the regulations on counteracting monopolistic practices by economic subjects;
2. monitoring price formation under conditions of limited competition;
3. issuing, in cases defined by this Law, decisions on counteracting monopolistic practices and shaping the organizational structures of economic subjects, and decisions defining the responsibility of subjects for such practices;
4. registering economic subjects having a monopolistic position on the market;
5. doing research into the state of concentration of the economy and presenting to the subjects concerned the suggested actions to attain a balanced market;
6. drafting or advising on draft proposals for new laws concerning monopolistic practices;
7. preparing governmental proposals for the policy of development of competition;
8. performing other duties stipulated under this Law or other Laws.

In order to supervise the performance of duties, staff members of the Anti-Monopoly Office are empowered to carry out checks in economic subjects. They have the right to:

1. enter the premises of the inspected economic subject,
2. look into documents of the inspected subject and demand copies and abstracts of documents,

3. demand explanations from employees of the inspected subject,

4. collect data and information on operations of the inspected subject, and also from other organizational bodies without additional authorization.

When economic subjects conduct an activity against the interest of other economic units, the Anti-Monopoly Office issues a decision prohibiting such an activity. The Anti-Monopoly Office issues also a decision prohibiting a merger, transformation or establishment of economic subjects if it leads to these subjects having a dominant position on the market . The part of the decision prohibiting monopolistic practices may be a fine payable to the state budget.

The fine may penalize the manager of an economic subject who fails to execute the decisions issued by the Anti-Monopoly Office.

Decisions of the Anti-Monopoly Office issued by virtue of this Law may be appealed against at the Anti-Monopoly Court within two weeks from receipt of such a decision.

F. Description of the parallel or supplementary legislation

Proceedings in anti-monopoly cases are taken by virtue of the Law "Code of Civil Procedures" and also the Law of 1958 on State Inspection of Trade by warrant bodies of State Inspection of Trade to prosecute subjects conducting an economic activity in the field of trade contradictory to the regulations on counteracting monpolistic practices.

C. COMMENTARY BY THE GOVERNMENT OF SPAIN ON LAW 16/1989 OF 17 JULY 1989 FOR THE PROTECTION OF COMPETITION

A. Razones para la introduccion de la nueva legislacion

Entre los motivos que justifican la derogación de la antigua ley 110/63 de Prácticas Restrictivas de la Competencia, por la ley 16/89 de Defensa de la Competencia, vigente desde el 8 de agosto de 1989, podemos destacar:

1. La escasa y poco relevante aplicación de la ley 110/63 en los más de 20 años que ha estado en vigor.
2. La incompatibilidad de algún artículo y la obsolescencia de otros en relación con el contenido de la Constitución Española de 1978.
3. La necesidad de disponer de aparatos normativos e institucionales más eficaces de defensa de la libre competencia, para poder garantizar la libertad de empresa y los intereses de los consumidores tal y como manda la Constitución.
4. La interrelación y coexistencia del Derecho comunitario de competencia y el Derecho nacional, derivada de la adhesión de España a las Comunidades Europeas desde el 1 de enero de 1986.

Teniendo en cuenta los factores mencionados, se creó una Comisión de Trabajo en la que participaron no sólo la Dirección y el Tribunal de Defensa de la Competencia, sino también representantes de los Ministerios más directamente interesados (Justicia, Economía y Hacienda, Agricultura, Industria y Energía, Transportes, Turismo y Comunicaciones, Sanidad y Consumo y Relaciones con las Cortes) dando lugar al texto, aprobado posteriormente, de la Ley 16/89 de Defensa de la Competencia, de la que se envía copia en español, francés e inglés.

B. Objetivos de la legislacion y evolucion hasta la legislacion actual

Tal y como se dice en la exposición de motivos, la ley responde a un objetivo específico, como es el de "garantizar la existencia de una competencia suficiente y protegerla frente a todo ataque contrario al interés público, siendo asimismo compatible con las demás leyes que regulan el mercado conforme a otras exigencias jurídicas o económicas, de orden público o privado".

Por tanto, la finalidad de la ley la podemos resumir en dos puntos, fundamentalmente:

- La eliminación de prácticas o situaciones de poder de mercado que impidan una eficiente asignación y distribución de recursos.
- La defensa del sistema contra los abusos derivados de restricciones intencionadas a la competencia.

Comparando la ley 16/89 con la precedente ley 110/63, se ha producido un cambio, moderado, en el aspecto sustantivo, y más acusado en el orgánico, procedimental y sancionador, tal y como vamos a exponer a continuación:

1. En lo que se refiere a la parte sustancial, la reforma aborda:

    a) Una ampliación de las conductas prohibidas, al prohibir, no sólo las prácticas restrictivas de la competencia surgidas de acuerdos o decisiones, como la ley 110/63, sino los propios acuerdos o decisiones, con independencia de que hayan sido o no llevados a cabo.

    Asimismo se incluye la prohibición de las recomendaciones colectivas, anteriormente no contempladas.

    b) Teniendo en cuenta que el Derecho de la competencia no puede ser rígido y la gran importancia que puede tener para la economía y el bienestar general la cooperación entre empresas, se siguen manteniendo las conductas autorizadas por ley y los supuestos de autorización individual, introduciendose como novedad, a imagen del Derecho Comunitario, la exención por categorías.

    Tanto para la autorización individual como para la de categorías, la Ley especifica una serie de requisitos obligatorios para que ésta pueda hacerse efectiva.

    c) El abuso de posición dominante se contempla a semejanza del art. 86 del TCEE, con la particularidad de que se incluye la situación de dependencia económica de unas empresas respecto a otras (proveedores o clientes) como una posibilidad de abuso.

    d) Por primera vez se prohibe la competencia desleal siempre que afecte a la libre competencia, sin entrar en detalles, ya que existe un proyecto de Ley de competencia desleal, que será la normativa encargada de regular la materia.

e) En cuanto a las operaciones de concentración se ha pasado de la simple obligación de proceder a su registro, al control de las mismas en la medida en que sean susceptibles de afectar a la competencia efectiva en el mercado o de crear o reforzar una posición de dominio.

La Ley establece unos umbrales mínimos, por encima de los cuales dicha concentración podrá someterse a estudio.

f) Por último, la Ley contempla, por primera vez , la regulación de las ayudas públicas, salvaguardando, de esta manera, el principio de igualdad de trato por los poderes públicos a todas las empresas, sea cual sea su titularidad, y evitando el riesgo de falsear la competencia.

2. En cuanto a la parte orgánica, hay que destacar, como cambios introducidos por la nueva Ley:

a) La asignación de nuevas funciones, referentes a concentraciones y ayudas públicas, al Tribunal de Defensa de la Competencia.

b) Ampliación de las unidades orgánicas de la Dirección General de Defensa de la Competencia como resultado de las nuevas funciones a desarrollar, quedando su estructura en tres Subdirecciones Generales:

- de Instruccion y Vigilancia
- de Estudios y Registro de Defensa de la Competencia
- de Control de las Estructuras de la Competencia

c) La desaparición del Consejo de Defensa de la Competencia.

3. Por último, con las novedades introducidas en la parte procedimental y sancionadora la nueva Ley pretende, por un lado, agilizar el sistema y por otro, persuadir a los posibles infractores para que no realicen actos que vayan en contra de la libre competencia.

a) En cuanto al procedimiento, hay que resaltar:

. La posibilidad de audiencia del instructor, ante el Tribunal, en determinados casos.

. El aplazamiento de la resolución del Tribunal, a instancia de parte, mediante la acreditación documental de que se está siguiendo un procedimiento por los mismos hechos ante los Organos comunitarios.

- La regulación de las medidas cautelares.

- El establecimiento de plazos en la instrucción de los expedientes de autorización.

- La facultad de la Dirección General de Defensa de la Competencia para sobreseer los expedientes cuando lo estime oportuno.

- La atribución de poderes de investigación e inspección a los funcionarios de la Dirección General, a semejanza del Derecho comunitario, aumentando la eficacia en el desempeño de sus funciones.

b) En cuanto al aspecto sancionador:

- La nueva Ley capacita al Tribunal para imponer multas directamente,a diferencia del sistema anterior en el que sólo podia proponerlas al gobierno.

  Los criterios de graduación y la introducción de las multas coercitivas se ha hecho de la misma manera que en el Derecho comunitario.

- Se contempla, por primera vez, la posibilidad de sancionar, aparte de a los infractores, a los representantes legales o a las personas integrantes de los órganos directivos que sean responsables, cuando se trate de personas jurídicas.

C. Contenido de la ley

a) I. La Ley 16/89 de Defensa de la Competencia, en el marco de los acuerdos y prácticas restrictivas o abusivas hace referencia a conductas prohibidas y conductas autorizadas.

1. Conductas prohibidas: La Ley contempla varios supuestos de prácticas prohibidas:

- Colusivas: Se prohibe todo acuerdo, decisión o recomendación colectiva o práctica concertada o conscientemente paralela, que tenga por objeto, produzca o pueda producir el efecto de impedir, restringir o falsear la competencia, en todo o en parte del mercado nacional, declarando nulos de pleno derecho los acuerdos, decisiones o recomendaciones que estén prohibidos.

- Abusivas: Se prohibe el abuso, por una o varias empresas, de su posición de dominio en todo o en parte del mercado nacional, incluso cuando esta situación de dominio haya sido establecida por disposición legal.

- Desleales: Asimismo quedan prohibidas aquellas conductas unilaterales que por medios desleales sean capaces de falsear sensiblemente la competencia.

2. Conductas autorizadas: En lo que se refiere a este tipo de conductas podemos diferenciar:

- Acuerdos, decisiones, recomendaciones y prácticas resultantes de la aplicación de una ley o disposición reglamentaria dictada en aplicación de una ley, a los que no se aplica la prohibición.

- Acuerdos, decisiones, recomendaciones y prácticas o categoría de los mismos, prohibidos pero que pueden ser autorizados individualmente cuando:

    - contribuyan a mejorar la producción o comercialización de bienes y servicios, o promuevan el desarrollo técnico o económico sin imponer restricciones no indispensables para alcanzar los objetivos, sin eliminar la competencia respecto de una parte sustancial del mercado, y permitiendo a los consumidores participar de las ventajas.

    - tengan por objeto defender o promover las exportaciones, adecuar la oferta a la demanda, elevar de manera importante el nivel social y económico de zonas o sectores deprimidos. También se incluyen aquí aquellas que por su escasa trascendencia económica (acuerdos de importancia menor) no afecten de manera significativa a la competencia.

- Categorias de acuerdos, decisiones, recomendaciones, prácticas, concertadas o conscientemente paralelas en los que intervengan sólo dos empresas y que impongan restricciones ya sea en la distribución y/o suministro, en la adquisición o utilización de derechos de propiedad industrial o intelectual o de conocimientos industriales o comerciales; o que tengan por objeto la investigación y desarrollo o el aumento de la competitividad de las empresas.

Esta autorización sólo puede hacerse mediante Reglamentos de exención.

II. Como ya hemos dicho, la ley establece un régimen de control de las concentraciones económicas que por su importancia y efectos pudieran alterar la estructura del mercado nacional de forma contraria al interés público.

La ley marca unos umbrales (cuando se adquiera o incremente una cuota igual o superior al 25% del mercado nacional o cuando la cifra de ventas global en España del conjunto de los partícipes supere los 20.000.000.000 de pesetas), por encima de los cuales esa concentración podrá ser sometida a estudio; siendo el Ministro de Economía y Hacienda el que decide si se ha de remitir al Tribunal de Defensa de la Competencia, quedando la decisión última, en todo caso, en manos del Gobierno.

Asimismo, se establece un sistema de notificación voluntaria por parte de los partícipes a la Dirección General, caso en el cuál se establecen unos plazos de 1 y 3 meses para comunicarselo al Tribunal y para que éste dictamine, respectivamente.

En caso de que el informe del Tribunal sea remitido al Gobierno, éste dispone de 3 meses para su resolución definitiva.

III. En cuanto a las ayudas públicas, se instituye un sistema que permite analizar éstas según criterios de competencia y, llegado el caso, prevenir sus efectos indeseables desde la perspectiva de los intereses generales.

b) Como se acaba de poner de manifiesto, todas las prácticas que figuran en los párrafos 3 y 4 de la Sección D del Conjunto de Principios y Normas se encuentran incluidas en el campo de acción de la ley 16/89.

En cuanto a la protección del consumidor, ésta se encuentra regulada de manera específica por la Ley 26/84, así como la publicidad engañosa está regulada por la Ley General de Publicidad 34/88.

Sin embargo, la legislación de Defensa de la Competencia es un eficaz instrumento de protección a los consumidores, en tanto en cuanto éstos se ven perjudicados de manera sensible por las alteraciones de la libre competencia.

D. Alcance de la aplicacion de la legislacion

Dado que en el punto anterior se han comentado de manera detallada todos los tipos de prácticas sometidas a control, así como aquéllas otras que por distintos motivos, quedan fuera del campo de aplicación de la ley, no queda aquí más que hacer hincapié en que:

1. La Ley 16/89 prohibe no sólo las prácticas restrictivas de la competencia surgidas de acuerdos o decisiones, sino también los acuerdos y decisiones con independencia de que hayan sido o no practicados.

2. Es de aplicación a todos los operadores económicos que concurren en el mercado, cualquiera que sea la titularidad (pública o privada), o fase de producción o comercialización en que intervengan, así como a todo sujeto que realice actividades de contenido económico, quedando exentos algunos sectores excluidos por ley.

3. Su campo de aplicación es exclusivamente el territorio nacional, siempre y cuando la competencia se vea afectada (en todo o en parte del mercado nacional).

E. Procedimiento. organos administrativos competentes

Teniendo en cuenta la complejidad y especificidad de la "Defensa de la Competencia", la declaración de la existencia de prácticas restrictivas ha de realizarse por un órgano o jurisdicción única que goce de la independencia necesaria para ello, sin perjuicio de que se encuentre sometido al necesario control judicial de sus actos.

La aplicación de la Ley se encomienda a dos Organos administrativos: el Tribunal de Defensa de la Competencia (con funciones de resolución y en su caso, de propuesta) y el Servicio de Defensa de la Competencia (encargado de la instrucción de los expedientes), ambos adscritos al Ministerio de Economía y Hacienda.

1. Tribunal de Defensa de la Competencia. Es un órgano integrado por 1 Presidente, 8 Vocales y 1 Secretario, que tiene encomendadas, entre otras, las funciones de:

   - Resolución de los asuntos asignados por Ley.
   - Interesar la instrucción de expedientes de la Dirección General de Defensa de la Competencia.
   - Autorizar los acuerdos, decisiones, recomendaciones y prácticas.

- Informar sobre los anteproyectos de Ley y demás temas que afectan a la competencia.

2. Dirección General de Defensa de la Competencia. Es un órgano en el que se integra el Servicio de Defensa de la Competencia por Real Decreto 177/90 y cuyas competencias son, entre otras:

- La instrucción de expedientes.

- La vigilancia de la ejecución y cumplimiento de las resoluciones del Tribunal de Defensa de la Competencia.

- El Registro de Defensa de la Competencia.

- El estudio e investigación de los sectores económicos.

- La información, asesoramiento y propuesta en materia de acuerdos, concentración y demás cuestiones relativas a la Defensa de la Competencia.

- La cooperación en materia de competencia con órganos e instituciones extranjeros e internacionales.

- Todas aquellos que tiendan al desarrollo de una eficaz política de competencia.

La Dirección General es la autoridad competente a efectos de las funciones de colaboración entre la Administración Pública y la Comisión de las Comunidades Europeas en la aplicación en España de las reglas comunitarias sobre la libre competencia (R.D. 1882/86).

En lo referente al procedimiento para conductas, este se desarrolla en dos etapas:

- La de instrucción (ante la Dirección General).
- La de resolución (ante el Tribunal de Defensa de la Competencia).

Hay que destacar, en la fase de instrucción, las facultades de investigación de la Dirección General y el deber de colaboración con ella de toda persona natural o jurídica, así como de las administraciones públicas, respetandose el derecho a la inviolabilidad del domicilio e instalaciones de las personas jurídicas, tal y como ordena la Constitución, a los que sólo puede accederse mediante un mandamiento judicial.

La instrucción de un expediente puede iniciarse:

- de oficio.
- a instancia de parte interesada:
  - . por denuncia.
  - . previa notificacón voluntaria.

De cualquier forma, una vez realizadas las indagaciones pertinentes por la Dirección General, el expediente, acompañado de un informe, es enviado al Tribunal para que éste resuelva, pudiendo a su vez solicitar nuevas pruebas hasta dictar resolución.

Contra las resoluciones definitivas del Tribunal, así como contra los autos de adopción de medidas cautelares, existe la posibilidad de interponer recurso contencioso-administrativo .

El Tribunal en sus resoluciones podrá: prohibir o autorizar acuerdos, decisiones, recomendaciones y prácticas; intimar al cese de las prácticas anticompetitivas y ordenar, en su caso, la remoción de sus efectos; o sancionar económicamente a los infractores.

Todas aquellas resoluciones del Tribunal de Defensa de la Competencia por las que se haya autorizado o prohibido, total o parcialmente, acuerdos, decisiones, recomendaciones y prácticas, se inscribirán en el Registro de Defensa de la Competencia,que tiene carácter público. También se inscribirán las operaciones de concentración que hayan sido objeto de expediente, tanto de oficio como por notificación voluntaria previa.

F. Legislacion paralela y complementaria

La adhesión de España a la C.E.E. ha dado lugar a una interrelación entre el Derecho Comunitario y el Derecho nacional de la competencia.

Ahora bien, ambos Derechos, comunitario y nacional, tienen diferente alcance, aplicándose el primero a los acuerdos, decisiones y prácticas que afecten al comercio entre Estados Miembros y a la estructura de la competencia del Mercado común, y el segundo a los que afecten, exclusivamente, al mercado nacional.

Asímismo, el Derecho Comunitario admite la aplicación paralela del Derecho nacional de la libre competencia, siempre que no se perjudique con ello la aplicación uniforme de las reglas comunitarias.

Además, los Organos nacionales (Tribunal y Dirección General de Defensa de la Competencia) están llamados, por un lado a colaborar en la aplicación del derecho comunitario por las autoridades comunitarias y por otro a aplicarlo directamente llegado el caso.

Por último, en cuanto a la legislación complementaria a la Ley 16/89, a parte de los ya mencionados R.D. 1882/86 y 177/90, se está procediendo a la elaboración de Reglamentos que desarrollen la Ley en cuanto a Exenciones por categorías y Notificación de concentraciones, tal y como se establece en los arts. 5 y 15 de la Ley respectivamente.

G. Decisiones

Desde el 8 de agosto de 1989, fecha en la que entra en vigor la nueva Ley 16/89 de Defensa de la Competencia, el Tribunal ha resuelto sobre un total de 11 expedientes, todos ellos a instancia de parte interesada, en los que se solicitaba autorización de determinados acuerdos.

De los 11 expedientes se han autorizado 8 , referentes a acuerdos de subfranquicia; distribución y venta; licencia de modelos de utilidad; distribución exclusiva (2), patente, know-how y marca; cesión de locales; compra venta y asistencia técnica.

Los tres que no han sido autorizados se refieren a fijación de precios hora de talleres de reparación de vehículos (2) y al de tratamiento de morosos.

En lo referente al tema de concentraciones se han recibido hasta la fecha 5 notificaciones voluntarias, de las cuales sólo una se ha estimado por parte de la Dirección General, que afectaba a la libre competencia, remitiéndose al Tribunal para que emita su informe, fase en la que actualmente se encuentra.

Por último, y en cuanto a expedientes sancionadores, hasta ahora todo los iniciados en base a la Ley 16/89 se encuentran en fase de instrucción, sin que por tanto, el Tribunal haya emitido resolución alguna.

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D. COMMENTARY BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON UNITED STATES ANTITRUST LAW

A Summary of United States Antitrust Law

A. Reasons for the introduction of U.S. antitrust legislation

The United States has several statutes governing restrictive business practices ("RBPs"). These statutes generally are referred to as the "antitrust laws." The most important of these laws are the Sherman Act (15 United States Code sections 1-7), the Clayton Act (15 U.S.C. sections 12-27), and the Federal Trade Commission ("FTC") Act (15 U.S.C. sections 41-58). The Sherman Act was enacted in 1890, and the Clayton Act and the FTC Act were enacted in 1914. These laws were enacted as a reaction to cartel abuses by powerful railroad, coal, and oil trust companies, among others.

B. Objectives of the legislation

The antitrust laws of the U.S. were passed as a "charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." *Northern Pacific Railway v. United States*, 356 U.S. 1 (1958). The purpose of the laws is to make consumers as well off as possible by ensuring a competitive market. Market competition enhances consumer welfare, because firms that can best meet the needs of consumers with the lowest prices or best service will prosper. Thus, competition tends to produce an efficient allocation of resources.

The courts' and enforcement agencies' views of types of conduct that should be prohibited by the laws have evolved through the years, as advances in economic knowledge have led to a greater understanding of which practices harm consumers and which practices benefit consumers. But this evolution reflects changes in the understanding of how best to achieve the objectives of the laws, and not changes in the objectives.

The U.S. antitrust laws "protect competition, not competitors." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977). The mere fact that a particular competitor is injured by a practice does not mean that it is prohibited; in fact, it is inherent in the process of competition that some firms prosper while others do not. It is the *process* of competition that the antitrust laws protect.

C. Practices subject to control by the U.S. antitrust laws

1. Sherman Act section 1

Sherman Act section 1 provides:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.

a. The requirements for illegality under Sherman Act section 1.

Section 1 contains three basic requirements for finding conduct unlawful. First, there must be an agreement -- a "contract, combination, or conspiracy" -- among two or more parties. Section 1 does not apply to conduct by one firm, in the absence of an agreement with one or more others. It is often difficult to tell whether there has been an agreement in a particular case, so the question whether there is an agreement has become one of the most frequently litigated issues in U.S. antitrust law.

Agreement may be proven by either direct or circumstantial evidence, and may be either explicit or tacit. Mere "conscious parallelism," which takes place when two or more firms knowingly take a similar course of action without an agreement to do so, does not constitute "agreement" under Sherman Act section 1.

Second, the agreement must be one that is an "unreasonable" restraint of trade. In deciding this question, the courts have developed two basic forms of analysis. Under the "*per se*" approach, the courts have found certain practices to be so inherently anticompetitive that they are held to be illegal restraints of trade without analysis of their competitive effects in a particular case. For example, price-fixing agreements among competing firms are *per se* violations. Under the "rule of reason" approach, by contrast, particular practices are analysed in detail and are held illegal only if it can be shown, based on the facts of the individual case, that the anticompetitive effects outweigh any competitive benefits resulting from the challenged conduct.

Third, the restraint of trade in question must restrain U.S. "interstate" or "foreign" commerce. Thus the Sherman Act does not apply to restraints that affect commerce within only one state of the United States. In practice, however, the courts have taken a broad view of the interstate commerce requirement. Local restraints of trade often have an effect on interstate commerce that is substantial enough to make the Sherman Act applicable even though the effect is indirect.

b. The controlled practices

(1) Agreements among competitors ("horizontal agreements")

(a) Price fixing and market division

Agreements among competitors (i.e., "horizontal agreements") to fix prices or to divide markets are illegal per se under Sherman Act section 1. United States v. Trenton Potteries Co., 273 U.S. 392 (1927). Such agreements fall into the "per se" category because they are plainly anticompetitive. They result in the elimination of price competition, enabling the conspirators to reduce output, raise prices to consumers, and obtain monopoly profits. The courts have concluded that such agreements can almost never have any desirable effect.

(b) Boycotts

A boycott is an agreement among several firms not to deal with another firm. Some boycotts have been found to be illegal per se. See, e.g., Klor's Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207 (1959). It is most accurate to say, however, that boycotts directly aimed at limiting or excluding competitors are per se illegal (because they may be part of a cartel agreement or have very similar effects), but other concerted refusals to deal may have legitimate business justifications and thus are likely to be tested under a rule of reason approach. See Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co., 472. U.S. 284.

(c) Joint ventures

A joint venture is a business arrangement in which two or more companies join together for a common enterprise. For example, two steel companies may co-operate to distribute one of their alloys in a foreign country. Such joint ventures are tested under a rule of reason approach. However, the courts are particularly careful to make sure that these arrangements are not being used as devices to facilitate per se violations (such as price fixing).

(2) Agreements between sellers and purchasers ("vertical arrangements")

(a) Resale price maintenance

Relationships between firms at different levels of the production and distribution chain are called "vertical" relationships. For example, the relationship between a manufacturer and a wholesaler is vertical; so is the relationship between a tin producer and a tin can manufacturer.

For 70 years, the law has protected the right of firms to decide unilaterally with whom they will deal in vertical relationships. In _Dr. Miles Medical Co. v. John D. Park & Sons Co._, 220 U.S. 373 (1911), the Supreme Court held that a manufacturer may not agree with its dealers on minimum resale prices. However, eight years later, in _United States v. Colgate & Co._, 250 U.S. 300 (1919), the Court made clear that only resale price maintenance _agreements_ violate the Sherman Act, and that a manufacturer acting unilaterally may set resale prices and enforce adherence to those prices by terminating non-complying dealers. In _United States v. Parke, Davis & Co._, 362 U.S. 29 (1960), the Court expounded upon and carefully circumscribed the _Colgate_ doctrine, focusing antitrust attention on all the facts and circumstances surrounding a manufacturer's resale price maintenance efforts. And most recently, in _Monsanto Co. v. Spray-Rite Service Co._, 465 U.S. 752 (1984), which upheld a jury's treble-damage award based on sharply conflicting evidence, the Supreme Court ruled that it is improper to infer a resale price maintenance agreement from the fact that a manufacturer learns of a dealer's unacceptable pricing policy from another dealer. The Court recognized that the critical issue is whether the manufacturer's decision was an independent one or was undertaken pursuant to an agreement with someone else.

(b) Other vertical restrictions

In contrast to resale price maintenance agreements, which are _per se_ unlawful, other vertical restrictions are analyzed under the rule of reason. The Supreme Court, in _Continental T.V., Inc. v. GTE Sylvania Inc._, 433 U.S. 36 (1977), concluded that a vertical restriction (in that case, a territorial limitation on retailers) might limit intrabrand competition (since retailers who sell the same brand are restricted to selling within their own particular territories), but at the same time it might also facilitate interbrand competition (since retailers may be induced to compete more effectively against other brands within their territories). The overall harm to competition from a vertical restraint that does not fix resale prices must outweigh the restraint's benefits to consumers before it is condemned under the law. Most vertical restraints are unlikely to be found illegal.

2. Sherman Act Section 2

Sherman Act section 2 provides that it shall be illegal to "...monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations."

Sherman Act section 2 shares with section 1 the requirement of an effect (however indirect) upon the interstate or foreign commerce of the United States. However, section 2 differs in that an individual firm can violate it; there is no agreement requirement unless combination or conspiracy to monopolize is alleged.

a. Monopolization

The offense of "monopolization" under Sherman Act section 2 has two requirements: 1) monopoly power in the relevant market and 2) the willful acquisition or maintenance of that power as distinguished from its acquisition through growth or development as a consequence of a superior product, business acumen or historic accident. Under this test, size alone is not an offense. See, e.g., United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945); United States v. Grinnell Corp., 384 U.S. 563 (1966). Thus, it is not unlawful to have a monopoly, only to have one that was acquired or has been maintained in a harmful, destructive, or otherwise unlawful manner.

Monopoly power (or market power, as it is also called) is generally defined as the power to control prices or to exclude competitors in a relevant market. A firm generally must have a very large market share (substantially more than 60 per cent) in order to have monopoly power, although a large market share alone is not sufficient to establish monopoly power. For example, if it is very easy for new firms to enter an industry, then a large market share would ordinarily confer no power over price, because any attempt to raise price would be quickly eroded by new entrants into the industry.

Many monopolization cases hinge on the definition of the market, in terms of both the type of product offered and the geographic area that defines the market. For example, what is the relevant product market for a seller of carbonated beverages? Is it all carbonated beverages, all cold beverages, or all beverages? See Coca-Cola Co., 91 F.T.C. 517 (1978). Similarly, what is the geographic market for burglar alarm services? Is it a single city, a metropolitan area, the whole country, or even the whole world? See United States v. Grinnell Corp., 384 U.S. 563 (1966). Market definition is of critical importance because it may mean the difference between a 1 per cent and a 90 per cent market share for a given firm.

In the "Cellophane" case, United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377 (1956), the Supreme Court established the principle that the product market is "composed of products that have reasonable interchangeability for the purposes for which they are produced -- price, use and qualities considered." Firms that could readily make the products must be included in the market, even if they are not currently doing so.

Once the relevant product and geographic markets are defined, it is a relatively simple matter to determine market share. But even if a company has a very high market share, it will not be found to have monopolized a market unless it also satisfies the "willful conduct" requirement. For example, a firm could be found to have engaged in such willful conduct if it used its control over regulated local telephone service monopolies unreasonably to impede competition in other markets that could be competitive, such as long distance telephone services and the provision of telephone equipment. See United States v. American Telephone & Telegraph Co., 552, F.Supp. 131 (D.C.C. 1982) aff'd Sub.nom. Maryland v. United States, 460 U.S.1001 (1983)

Another example of conduct often alleged to be part of a monopolization scheme is predatory pricing. Predatory pricing consists of a large company pricing below cost for a period of time in order to drive smaller competitors out of business. After the competitors are gone, the company then charges monopoly prices. Of course, this strategy can work only if it is hard for others to re-enter the market once prices are raised. It is very important -- and very difficult -- to distinguish anticompetitive predatory pricing from simple "hard competition." It is essential carefully to observe this distinction, otherwise the antitrust laws might be enforced in a way that deters the very conduct that they seek to promote -- vigorous competition. Economics and experience indicate that instances of true predatory pricing are relatively uncommon.

b. Attempt to monopolize/conspiracy to monopolize

Proof of an attempt to monopolize or conspiracy to monopolize generally requires the same elements as monopolization, although the monopoly need not have been fully achieved in order to establish an attempt. Also, in order to establish an attempt to monopolize, it generally must be shown that the company in question had a "specific intent" to monopolize and that there was a dangerous probability that the attempt would succeed.

3. Clayton Act

a. Mergers

Section 7 of the Clayton Act provides that mergers may be prohibited when their effect "may be substantially to lessen competition, or to tend to create a monopoly." Mergers that take place through the acquisition of stock or of assets are covered.

Parties contemplating a merger larger than a certain size must file with the government a "pre-merger notification." Although government approval is not required for a merger, notification provides the government with a short time prior to the completion of a merger to investigate the merger's potential effect on competition.

Mergers are often classified into three major categories. Horizontal mergers are those between competitors. Vertical mergers involve situations where a firm merges with either a customer or a supplier. Conglomerate mergers are those in which the merging firms had no direct pre-existing horizontal or vertical relationship. Horizontal mergers are generally the only mergers that give rise to competitive problems.

In general, a merger may be found to be anticompetitive if it would create monopoly power or if it would make it significantly easier for the remaining firms to collude in any relevant market. The courts consider many factors in determining whether a given merger is anticompetitive, including the market shares of the merging firms, the merger's effect upon potential competition, and the barriers to entry which exist in the affected markets. *See U.S. Department of Justice Merger Guidelines* (June 14, 1984).

b. Tying arrangements

Attempts by a seller to condition the sale of a product (the "tying product") upon the buyer's agreement to purchase another product (the "tied product") from the seller may be held to be illegal under section 3 of the Clayton Act where the effect of "such condition...may be to substantially lessen competition or tend to create a monopoly in any line of commerce." Tying arrangements may also be challenged as unlawful agreements under section 1 of the Sherman Act.

The courts have said that tying arrangements are illegal *per se*, but the standard applied by the courts is different from the usual *per se* standard. Tying is illegal only if the firm has sufficient economic power appreciably to restrain competition in the market for the tied product, and if a "not insubstantial" amount of interstate commerce is affected in the tied product. See, e.g., International Salt Co. v. United States, 332 U.S. 392 (1947); United States Steel Corp. v. Fortner Enterprises, Inc., 429 U.S. 610 (1977).

There has been some criticism of the legal rules concerning tying arrangements. The basic economic criticism is that tying arrangements should be analysed under a true rule of reason approach, since they may not always be anticompetitive. See, e.g., Jefferson Parish Hospital District No. 2 v. Hyde, 466, U.S.2, 33-35 (1983) (concurring opinion).

c. Interlocking directorates

Clayton Act section 8 prohibits any person from sitting on the board of directors of two or more corporations that are competitors, if the corporations exceed a certain size. The purpose of this prohibition is to prevent competition from being diminished or eliminated by interlocking directorates.

4. Federal Trade Commission Act

The FTC Act gives the Federal Trade Commission authority to prevent corporations from engaging in "unfair methods of competition." The FTC has generally interpreted this phrase to mean conduct of the type prohibited by the Sherman and Clayton Acts. But it has also, on a few occasions, been applied to conduct that is not illegal under the other statutes. It is important to note that only the FTC (and not the Department of Justice or private parties) has the power to enforce the FTC Act, which it does through a wide variety of investigative and adjudicatory powers.

D. The scope of application of each statute

As previously mentioned, the federal antitrust statutes apply only when the particular restrictive business practice results in an effect upon interstate or foreign commerce. This is because the federal government's constitutional authority to regulate commerce is limited to interstate or foreign commerce. Local trade is considered a matter to be controlled by the individual states. As noted previously, however, the commerce requirement can be satisfied by a showing of any substantial indirect effect upon interstate or foreign commerce.

A number of states have adopted statutes that closely parallel the federal antitrust laws. These statutes apply to restraints of trade that have an effect in the particular state. Both state and federal antitrust statutes may apply to the same conduct.

The federal antitrust laws apply generally to service industries, as well as to industries involved in the production and sale of goods, although certain provisions of the Clayton Act do not apply to service industries. Thus, for example, medical services are included (see Arizona v. Maricopa County Medical Society, 457 U.S. 332 (1982)), and so are legal services (see Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975)), real estate broker services, and unregulated transportation.

However, a few industries and types of organizations are granted limited exemptions to the antitrust laws. As a general rule, these exemptions to the antitrust laws are interpreted narrowly. Examples of some exemptions include the insurance industry, organized labour, and agricultural co-operatives.

The scope of the international jurisdiction of the antitrust laws has been controversial at times. U.S. antitrust laws can apply to foreign conduct if there is the requisite domestic anticompetitive effect. In 1982, Congress passed the Foreign Trade Antitrust Improvements Act to make it clear that there is U.S. antitrust jurisdiction over an act in export or entirely foreign trade only if the act results in a direct, substantial, and reasonably foreseeable anticompetitive effect upon U.S. domestic or import commerce, or on the business of a U.S. exporter.

E. Description of enforcement machinery

The major enforcement machinery for the U.S. antitrust laws is the judicial system. Decisions concerning whether an antitrust violation has taken place, and concerning the appropriate sanctions when such a violation takes place, are generally made by the courts. Lower court decisions are subject to appeal to higher courts, including ultimately the U.S. Supreme Court.

However, within this framework the Department of Justice Antitrust Division, the Federal Trade Commission, and private parties injured by restrictive business practices all play a role in enforcement.

1. Antitrust Division of the Department of Justice

The Sherman and Clayton Acts authorize the federal Department of Justice to bring civil and criminal cases to enforce those laws. Within the Department of Justice, this responsibility is held by the Antitrust Division.

The Antitrust Division operates as an investigator and a prosecutor. In certain circumstances, it also gives advance statements of its intentions, called "business reviews," concerning particular proposed transactions.

The Antitrust Division investigates conduct that it suspects to be in violation of the antitrust laws by seeking information from the firms under investigation as well as from customers, suppliers, competitors, and industry experts. The Antitrust Division can compel firms to produce documents relevant to its investigations. It also can compel testimony from persons with knowledge of the matters under investigation, except that a person cannot be compelled to give testimony that is self-incriminating. A conspirator who is granted immunity from prosecution, however, can be compelled to testify against co-conspirators.

A criminal case brought by the Antitrust Division can lead to fines (up to $1 million for companies or up to $250,000 for individuals) and imprisonment (up to 3 years for individuals); in certain limited circumstances, the Division can also seek a fine equal to double the gross amount of the gain to the violator or the loss to the victim.

When the Antitrust Division brings a civil case, it ordinarily asks the court to issue an "injunction," a judicial order commanding the defendant to do something or to cease doing something. For example, a civil action involving a merger can result in an injunction directing a firm not to merge with its competitor.

2. Federal Trade Commission

The Federal Trade Commission is an independent regulatory agency established by Congress in 1914. The FTC enforces the Clayton Act, the Wilson Tariff Act, and the Robinson-Patman Act, as well as the Federal Trade Commission Act, Section 5 of which prohibits "unfair methods of competition."

The FTC initiates investigations as a result of staff work, private party complaints, or requests by other government agencies, the President, or members of Congress. After initial investigation, the Commission may approve the use of one of four compulsory means of obtaining information if voluntary requests will not suffice: annual or special reports, access orders, subpoenas, or civil investigative demands. To enforce compliance with such compulsory means, the FTC must apply to a district court. Once the Commission votes to issue an administrative complaint, an administrative law judge supervises the process of collecting and hearing evidence.

The Commission's remedial powers include issuance of cease and desist orders for violations of Section 5 of the FTC Act. If such a cease and desist order is violated, the FTC may seek from a district court civil penalties of up to $10,000 per violation, an injunction, or other equitable relief. The FTC Act authorizes the Commission to ask a district court for preliminary injunctive relief while an administrative complaint against a merger or acquisition is pending.

3. Private parties

Private parties may bring civil suits in the courts for violations of the Sherman and Clayton Acts. A private party may (1) sue for three-fold the damages inflicted upon its business or property by an antitrust violator ("treble damages"), (2) petition for injunctive relief against the violator (to prevent it from continuing the unlawful practices), or (3) raise as a defense, in a suit against it, the antitrust violations of the plaintiff.

The provision for treble damages gives private parties an incentive to sue. This encourages private enforcement.

F. Antitrust understandings with other countries

The United States has signed agreements on antitrust co-operation with the Federal Republic of Germany, Australia and Canada. The U.S.-German agreement, signed in 1976, calls for mutual co-operation in antitrust enforcement and for notification, consultation, and co-ordination in the event that an antitrust investigation in one country is likely to affect important interests of the other country. A 1982 agreement with Australia on antitrust matters provides for antitrust co-operation and a mechanism for resolving differences that arise when Australian government policy and U.S. antitrust laws are in conflict. The United States and Canada are parties to a "memorandum of understanding", concluded in 1984, on procedures governing antitrust matters between the two countries. The understanding calls for co-operation in antitrust enforcement and establishes a framework for reducing potential antitrust conflicts between the two Governments.

ANNEXES

Annex I	DENMARK : Competition Act 1989, Statute No.370 of 7 June 1989
Annex II	POLAND : Law of Counteracting Monopolistic Practices, 24 February 1990 (English translation)
Annex III	SPAIN : Law 16/1989 for the Protection of Competition, 17 July 1989 (English translation)
Annex IV	UNITED STATES OF AMERICA (a) The Sherman Act (1890); (b) The Clayton Act (1914); and (c) The Federal Trade Commission Act

Annex I

DENMARK

COMPETITION ACT 1989

Statute No. 370 of 7 June 1989

Part 1
Purpose and Scope

1. The purpose of this Act is to promote competition and thus strengthen the efficiency of production and distribution of goods and services etc. through the greatest possible transparency of competitive conditions and through measures against restraints of the freedom of trade and other harmful effects of anti-competitive practices. Accordingly, in step with the increasing internationalization, the aim is to ensure a development of the market structure based on competition and efficiency.

2. This Act applies to:

1) Commercial enterprises and associations of such enterprises. Sections 11-14 below do not apply to any business activity which, under special provisions, is subject to control or approval by public authorities, provided that the matter in question is regulated by public authorities.
2) Business activity performed by a central or local government administration, which consists in supply of or demand for goods or services etc. of importance for the competition within trade and industry. Sections 11-14 below do not apply to such business activity.

3. This Act does not apply to wages and labour relations. However, for the purpose of administering this Act, the Competition Council may demand that organizations and enterprises submit information about wages and labour relations.

Part 2
Competition Council

4.-(1) This Act is administered by the Competition Council.

(2) The Competition Council consists of a Chairman and 14 members. The Chairman is appointed by the King. The other members are appointed

by the Minister of Industry for a term of 4 years. The Council shall cover comprehensive knowledge of commercial relations, including experience in legal, economic, financial and consumer-related matters. The Chairman and 7 of the members shall be independent of commercial interests.

(3) A Secretariat under the management of a Director shall be attached to the Council.

(4) The Minister of Industry lays down rules on the activities of the Council.

Part 3
Transparency

5.-(1) Agreements and decisions, by which a dominant influence is exerted or may be exerted on a certain market, shall be subject to notification to the Competition Council within 14 days of the conclusion of the agreement or decision concerned.

(2) Changes in matters relating to any notification made shall likewise be notified within 14 days.

(3) Agreements and decisions under subsection (1) shall not be valid unless notified within the time limit prescribed.

(4) The Competition Council lays down rules on the notification procedure.

6. The Competition Council may demand any information, including accounts, accounting records, transcripts from ledgers, other business records and electronic data, which is considered necessary for its activities or for deciding whether the provisions of this Act shall apply to a specific matter.

7. Where the competition is not sufficiently workable, or where, for other particular reasons, it is necessary to observe the competitive conditions or create transparency of price conditions, the Competition Council may:

1) for a period of up to 2 years at a time order an enterprise or association etc. within a specified time limit to currently submit specified types of information about prices, profits, discounts, bonuses, business conditions, financial and organizational relations, etc.,
2) lay down rules on invoicing and other documentation of the price calculation,
3) lay down rules on marking or display of price and quantity.

8.-(1) The Competition Council shall undertake investigations and may publish reports on such investigations suitable for promoting transparency regarding competitive conditions, cf., however, section 10(2).

(2) Enterprises or associations etc. comprised by an investigation shall be informed of the report before it is published.

(3) Comments, if any, made by the enterprise or association etc., shall at request be published in connection with the report, provided that such comments are submitted to the Council within 30 days of receipt of the report.

9. If it is considered suitable in order to promote competition, and thus strengthen the efficiency, the Competition Council may publish information about prices, discounts, bonuses, etc., cf., however, section 10(2).

10.-(1) Paragraph 2) of section 12(1) of the Act on Public Access to Documents and Administrative Files does not apply to treatment of a request for access to cases under this Act, unless the request concerns information about technical matters, including research, production methods and products, or matters pertaining to individual customers in banks and insurance companies.

(2) Where an enterprise or association etc. may suffer a considerable financial loss, the Council may under special circumstances decide that information, other than that referred to in subsection (1), is not to be disclosed or made available to the public.

(3) Any party, required to submit information in pursuance of sections 5 and 6, and paragraph 1) of section 7, can make a request to the Chairman of the Council that such information which is not to be disclosed or made available to the public pursuant to subsections (1) and (2), shall not be submitted to the members of the Council, either. The Chairman makes the final decision as to which extent and in which form the information should be submitted.

Part 4
Measures against harmful effects of anti-competitive practices

11. If the Competition Council finds that an anti-competitive practice is exerted on a certain market, which entails or may entail harmful effects on competition and accordingly on the efficiency of production and distribution of goods or services etc. or restraints of the freedom of trade, cf. section 1, the Council can attempt to terminate the harmful effects through negotiation.

12.-(1) If such harmful effects as referred to in section 11 cannot be terminated through negotiation, the Council issues an order which may imply total or partial termination of agreements, decisions, stipulations and business conditions.

(2) If the harmful effects cannot be terminated by order issued in pursuance of subsection (1), the Council may order one or more of the enterprises concerned to sell to specified buyers on the terms usually applied by the enterprise to similar sales. The enterprise is, however, always entitled to demand payment in cash or adequate security.

13.-(1) If an anti-competitive practice as referred to in section 11 entails that a price or profit, whether as to level and duration, clearly exceeds what would be obtainable on a market with workable competition, and if such effect cannot be terminated in any other way, the Council decides for a term not exceeding one year at a time, for specified goods and services etc., enterprises or associations etc., that:

1) given prices or profits must not be exceeded, or
2) specified calculation rules shall be observed in connection with the calculation of prices and profits.

(2) Assessment of a price or profit shall be based on the conditions of such enterprises which are operated with appropriate technical and commercial efficiency. When stipulating the price of a product or service etc., the enterprise shall be able to meet the necessary costs and to obtain a profit reflecting the risk involved in manufacturing and sale of the product or service etc.

(3) When stipulating maximum prices or profits, the Competition Council may deviate from the principles laid down in subsection (2), if justified by weighty reasons, including considerations for production sectors with intensive research and development.

14.-(1) Enterprises or associations etc. are not allowed to agree, decide, stipulate, or otherwise to make it a condition that subsequent resellers shall observe minimum prices or profits, unless the Competition Council has approved the agreement etc. in question. Such approval shall be justified by weighty reasons.

(2) If recommended prices are indicated for resale, it shall appear that the price is only recommended.

15. As regards business activity, to which sections 11-14 do not apply, cf. paragraph 1), 2nd period, and paragraph 2) of section 2, the Competition Council may approach the competent public authority and point to the potentially harmful effects on competition. Such communication shall be published.

Part 5
Appeal

16. The decisions made by the Competition Council in pursuance of this Act cannot be brought before any administrative authority other than the Competition Appeals Tribunal, and cannot be brought before the courts of law until the Appeals Tribunal has made its decision.

17.-(1) The Competition Appeals Tribunal consists of a Chairman who is qualified for the post as a Supreme Court Judge, and two other members who shall be proficient in economics and law, respectively.

(2) The Chairman and the members are appointed by the Minister of Industry. They shall be independent of commercial interests. Their appointment ceases by the end of the month in which they attain the age of 70.

(3) The Minister of Industry lays down rules on the activities of the Appeals Tribunal, including rules on fees chargeable for bringing decisions before the Appeals Tribunal.

18.-(1) Decisions made in pursuance of section 2, 1st period of section 3, section 5(1) and (2), section 7, section 10(1) and (2), section 11, apart from a decision to reject treatment of a case, section 12, section 13 and section 14, may be brought before the Appeals Tribunal by:

1) the party to whom the decision is directed, and
2) any party who has an individual and essential interest in the case.

(2) Appeal shall be lodged with the Appeals Tribunal within 4 weeks of the decision having been notified to the party concerned. If justified by weighty reasons, the Appeals Tribunal may disregard an exceeding of the time limit.

(3) Appeal against a decision made in pursuance of section 10(1) and (2) shall have suspensive effect. Appeal against other decisions may be accorded suspensive effect by the Council or the Appeals Tribunal.

(4) A decision made by the Appeals Tribunal may be brought before the High Court within 8 weeks of the decision having been notified to the party concerned. If the Appeals Tribunal has overruled the decision of the Council, the Council has an equal right to bring the decision before the High Court. If the time limit is exceeded, the decision of the Appeals Tribunal shall be final.

Part 6
Penalty provisions, other powers

19. If a party neglects to make notification, submit information or to report to the Competition Council in due time, as provided in sections 5, 6 and 7,

the Council may, as a coercive measure, impose on the party concerned a daily or weekly fine. Such fine shall be distrainable.

20.-(1) Unless subject to higher penalty in pursuance of other legislation, a fine shall be imposed on any party who intentionally or by gross negligence:

1) infringes section 5(1) and (2), and section 14,
2) submits incorrect or misleading information, cf. section 5(1) and (2), section 6 and paragraph 1) of section 7,
3) disregards an agreement made upon negotiation between the Competition Council and the party concerned, cf. section 11,
4) fails to comply with an order issued in pursuance of section 12, or does not observe rules laid down in pursuance of section 13(1), or
5) submits incorrect or misleading information to the Appeals Tribunal or conceals matters of importance for the case in question.

(2) Regulations issued in pursuance of paragraphs 2) and 3) of section 7 may contain rules on imposition of a fine for intentional or grossly negligent infringement of the provisions of such regulations.

(3) If the infringement is committed by a public or private limited company, a cooperative society or the like, the fine may be imposed on the company as such. If the infringement is committed by a central or local government administration or by a corporation of local authorities, the fine may be imposed on the administration or corporation concerned.

(4) The period of limitation for imposing a penalty is 5 years.

21.-(1) Having obtained a court order, representatives of the Competition Council may, on due proof of identity:

1) on the spot obtain and make copy of any information which is of importance for the performance of supervision according to this Act, including accounts, accounting records, ledgers, other business records and electronic data, and
2) gain access to the premises and vehicles of an enterprise or association etc.

(2) The Police shall give assistance in that respect. Having consulted the Minister of Industry, the Minister of Justice may lay down rules on such assistance.

Part 7
Commencement and Transitional Provisions

22.-(1) This Act shall come into force on 1st January 1990.

(2) As from the same date, the Monopolies and Restrictive Practices Supervision Act 1955, cf. Consolidation Act No.108 of 11th March 1986, and the Prices and Profits Act 1974, cf. Consolidation Act No.109 of 11th March 1986, shall be repealed.

(3) Notifications which are made according to section 6(1) of the Monopolies and Restrictive Practices Supervision Act 1955 before the 1st January 1990 shall be transferred to the Competition Council.

(4) Rules on price calculation etc. and on invoicing, which are laid down according to section 6(2) and section 11(1) of the Prices and Profits Act shall remain in force 1 year after the commencement of this Act, or until their prior expiration or abrogation by the Competition Council.

(5) Intentional or grossly negligent infringement of the rules referred to in subsection (4) shall be subject to a fine.

23. This Act does not extend to the Faroe Islands and Greenland.

Annexe I

DANEMARK

LOI SUR LA CONCURRENCE 1989

Loi N° 370 du 7 juin 1989

Chapitre 1er
Objet et domaine d'application de la loi

Art. 1er. La présente loi a pour objet la favorisation de la concurrence et partant le renforcement de l'efficacité dans la production et la commercialisation des biens et des services, etc. en assurant le plus grand degré de transparence dans les rapports concurrentiels et en fixant des mesures contre les restrictions apportées à la liberté professionnelle et autres effets nuisibles des restrictions apportées à la concurrence. Dans le cadre de l'internationalisation progressive, un développement de la structure industrielle et commerciale basé sur la concurrence et l'efficacité est visé.

Art. 2. La loi s'applique:

1) aux entreprises commerciales et aux groupements de commerçants et d'industriels. Les articles 11 à 14 ne s'appliquent pas aux activités commerciales dont l'exercice est défini ou autorisé par les autorités publiques selon une base légale spéciale, dans la mesure où ces activités sont réglées par les autorités publiques;
2) aux acivités commerciales exercées par l'administration nationale ou communale et comprenant l'offre ou la demande de biens ou de services, etc. ayant un impact sur la concurrence dans l'industrie et le commerce. Les articles 11 à 14 ne s'appliquent pas à de telles activités commerciales.

Art. 3. La loi ne comprend pas les conditions salariales ou de travail. Toutefois, le Conseil de la Concurrence peut, dans le cadre de l'administration de la loi, exiger des renseignements concernant les salaires et les conditions de travail de la part des orgnisations et des entreprises.

Chapitre 2
Le Conseil de la concurrence

Art. 4. La loi est administrée par le Conseil de la concurrence.

Al. 2. Le Conseil de la concurrence se compose d'un président et de 14 membres. Le président est nommé par le Roi. Les autres membres sont nommés par le ministre de l'industrie pour une période de quatre ans. Ce Conseil doit comprendre des personnes ayant des connaissances étendues de la vie commerciale, y compris des aspects juridiques, économiques, financiers, de même que des aspects relatifs a la consommation. Le président et sept des membres du Conseil doivent être indépendants des intérêts commerciaux.

Al. 3. Un secrétariat dirigé par un directeur est attaché au Conseil.

Al. 4. Le ministre de l'industrie fixe les modalités des activités du Conseil.

Chapitre 3
Transparence

Art. 5. Les accords et décisions susceptibles d'exercer une influence dominante sur une partie du marché doivent être notifiés au Conseil de la concurrence dans les 14 jours qui suivent la conclusion de l'accord ou la prise de la décision.

Al. 2. Toute modification apportée à ces accords et décisions notifiés doit également être notifiée au Conseil dans un délai de 14 jours.

Al. 3. Les accords et décisions compris par la disposition de l'alinéa 1er ne sont valables que s'ils sont notifiés dans le délai fixé.

Al. 4. Le Conseil de la concurrence fixe les règles de notification.

Art. 6. Le Conseil de la concurrence peut exiger tous renseignements, y compris tous comptes, documents comptables, extraits de livres, autres documents commerciaux et données enregistrées par voie électronique jugés nécessaires à la poursuite de ses activités ou pour decider si les dispositions de la loi sont d'application.

Art. 7. Dans les cas où la concurrence n'est pas assez efficace ou s'il est nécessaire, pour d'autres raisons particulières, de suivre la situation concurrentielle ou d'obtenir des prix transparents, le Conseil de la concurrence pourra:

1) pour des périodes successives pouvant aller jusqu'à deux ans enjoindre à une entreprise, à un groupement, etc. de communiquer régulièrement, dans un délai à fixer, certaines catégories de renseignements sur les prix, les marges bénéficiaires, les rabais, les primes, les conditions de transaction, les rapports économiques et organisatoires, etc.,

2) fixer des règles concernant la facturation et les autres documents formant la base de la fixation des prix,
3) fixer des règles de marquage ou d'affichage des prix et des quantités.

Art. 8. Sous réserve des dispositions de l'article 10, al. 2 ci-dessous, le Conseil de la concurrence doit effectuer des examens susceptibles de promouvoir la transparence en matière concurrentielle et peut en publier les résultats.

Al. 2. Les entreprises, les groupements, etc. concernés par un examen doivent être informés des résultats de l'examen avant leur publication.

Al. 3. Sur demande, les éventuels commentaires des entreprises, groupements, etc. doivent êtres publiés en même temps que les résultats de l'examen, si ces commentaires sont soumis au Conseil au plus tard 30 jours après la réception des résultats de l'examen.

Art. 9. Sous réserve des dispositions de l'article 10, al. 2 ci-dessous, le Conseil de la concurrence peut publier des renseignements concernant les prix, les rabais, les primes, etc. s'il le juge utile pour favoriser la concurrence et renforcer l'efficacité.

Art. 10. Les dispositions de l'article 12, al. 1er, No 2 de la loi sur la publicitè de l'administration ne s'appliquent pas à l'examen d'une demande d'accès aux documents administratifs dans les affaires comprises par cette loi, à moins que la demande ne vise des renseignements techniques, y compris des renseignements concernant la recherche, les méthodes de production et les produits, ou des renseignements concernant les rapports des clients individuels avec les établissements de crédit et les compagnies d'assurance.

Al. 2. Dans des circonstances particulières, le Conseil peut décider que les renseignements autres que ceux mentionnés à l'al. 1er ne peuvent être communiqués ou rendus accessibles au public dans les cas où leur divulgation serait susceptible de porter un préjudice essentiel aux intérêts d'une entreprise, d'un groupement, etc.

Al. 3. Toute personne qui, selon les articles 5, 6 et 7, No 1, doit fournir des renseignements, peut demander au président du Conseil que les renseignements qui, selon l'al. 1er et 2, ne peuvent être communiqués ou rendus accessibles au publique, ne soient pas non plus communiqués aux membres du Conseil. Le président décide dans quelle mesure et sous quelle forme les renseignements doivent être fournis.

Chapitre 4
Mesures contre les effets nuisibles des restrictions de la concurrence

Art. 11. Lorsque le Conseil de la concurrence estime qu'une partie du marché est assujettie à une restriction de la concurrence entraînant ou susceptible d'entraîner des effets nuisibles à la concurrence et partant à l'efficacité de la production et de la commercialisation des biens ou des services, etc. ou des restrictions à la liberté commerciale, cf. l'article 1er, le Conseil peut tenter, par voie de négociations, de mettre fin à ces effets nuisibles.

Art. 12. S'il s'avére impossible de mettre fin aux effets nuisibles mentionés à l'article 11 par voie de négociations, le Conseil fera des injonctions pouvant comprendre l'annulation totale ou partielle d'accords, de décisions, de dispositions et de conditions de transaction.

Al. 2. S'il s'avère impossible de mettre fin aux effets nuisibles par voie d'injonctions selon l'alinéa 1er, le Conseil pourra enjoindre à une ou plusieurs des entreprises en question de vendre des produits à certains acheteurs à déterminer, aux conditions usuelles de l'entreprise s'appliquant à des ventes similaires. L'entreprise pourra cependant toujours exiger le paiement au comptant ou une sûreté suffisante.

Art. 13. Au cas où une restriction de la concurrence à laquelle sont applicables les disposition de l'article 11 a pour résultat que le niveau d'un prix ou d'une marge bénéficiaire dépasse manifestement le niveau réalisable en ce qui concerne tant l'importance que la durée sur un marché avec une concurrence efficace, et où il est impossible de mettre fin à cet effet par d'autres mesures, le Conseil décidera pour des périodes successives ne dépassant pas un an pour des biens et services, etc. déterminés et pour des entreprises, des groupements, etc.:

1) que les prix ou les marges bénéficiaires indiqués ne peuvent pas être dépassés, ou
2) que certaines règles de calcul doivent être suivies lors du calcul des pris et des marges bénéficiaires.

Al. 2. L'évaluation d'un prix ou d'une marge bénéficiaire sera faite en se basant sur la situation dans des entreprises exploitées d'une manière satisfaisante du point de vue technique et commercial. Lors de la fixation du prix d'un bien ou d'un service, etc., l'entreprise sera en droit d'assurer la couverture des frais nécessaires et d'une marge bénéficiaire, en tenant compte du risque inhérent à la production et à la vente du bien, du service, etc.

Al. 3. Lors de la fixation des prix ou des marges maximum, le Conseil de la concurrence pourra déroger aux principes résultant de l'alinéa 2, eu égard aux besoins de recherche et de développement des différants domaines de production.

Art. 14. Les entreprises, groupements, etc. ne peuvent pas convenir, décider ou fixer comme condition que certains prix et marges minimum doivent être respectés en cas de revente, à moins que le Conseil de la concurrence n'ait approuvé les accords, etc. en question. Cette approbation peut être donnée dans des cas justifiés par des motifs importants.

Al. 2. Lors de l'indication des prix indicatifs de revente, il est à préciser que le prix est indicatif.

Art. 15. En ce qui concerne les activités exclues du champ d'application des articles 11 à 14 aux termes de l'articles 2, No 1, 2ème phrase et No 2, le Conseil de la concurrence peut faire une démarche auprès de l'autorité compétente en indiquant les éventuels effets nuisibles à la concurrence. Cette démarche sera publiée.

Chapitre 5
Recours

Art. 16. Les décisions prises par le Conseil de la concurrence en vertu des dispositions de la présente loi ne peuvent être soumises à une autorité publique autre que la Commission d'appel en matière concurrentielle et elles ne peuvent être soumises aux tribunaux avant que la décision de cette Commission soit connue.

Art. 17. La Commission d'appel est composée d'un président, remplissant les conditions requises pour être juge auprès de la Cour suprême, et de deux autres membres ayant des connaissances économiques et juridiques, respectivement.

Al. 2. Le président et les membres sont désignés par le ministre de l'industrie. Ils doivent être indépendants de tout intérêt commercial. Leur mandat expire à la fin du mois dans lequel ils ont 70 ans révolus.

Al. 3. Le ministre de l'industrie fixe les règles de procédure des activités de la Commission d'appel, y compris les règles concernant les droits à payer en cas de saisine de la Commission.

Art. 18. Les décisions prises en vertu des articles 2, 3, 1ère phrase, 5, al. 1er et 2, 7, 10, al. 1er et 2, 11 (à l'exception des décisions d'irrecevabilité d'une affaire), 12, 13 et 14, peuvent être soumises à la Commission d'appel par:
1) la personne visée par la décision, et
2) toute personne ayant un intérêt individuel et capital dans l'affaire.

Al. 2. La saisine de la Commission d'appel doit avoir lieu au plus tard quatre semaines après la communication à l'interessé de la décision. Dans des conditions particulières, la Commission d'appel peut ignorer des dépassements de ce délai.

Al. 3. L'appel devant la Commission d'appel d'une décision prise en vertu de l'article 10, al. 1er et 2, est suspensif. Si la Commission est saisie d'autres décisions, le Conseil ou la Commision d'appel peuvent décider que l'appel est suspensif.

Al. 4. La décision de la Commission d'appel pourra être soumise au tribunal régional au plus tard huit semaines après la communication à la personne interessée par la décision. Si la Commission d'appel a modifié la décision du Conseil, celui-ci a également la faculté de soumettre la décision au tribunal régional. En cas de dépassement du délai, la décision de la Commission d'appel est définitive.

Chapitre 6
Sanctions, autres attributions

Art. 19. Si le Conseil de la concurrence n'est pas informé en temps utile selon les articles 5, 6 et 7, le Conseil peut imposer des astreintes journalières ou hebdomadaires susceptibles de recouvrement par voie de saisie.

Art. 20. Toute personne qui, soit intentionellement, soit par faute lourde:
1) viole les dispositions de l'article 5, al. 1er et 2, et de l'article 14,
2) donne des renseignements faux ou trompeurs, cf. l'article 5, al. 1er et 2, article 6 et article 7, No 1,
3) passe outre à un accord conclu après négociations entre le Conseil de la concurrence et elle-même, cf. l'article 11,
4) ne donne pas suite à des injonctions selon l'article 12 ou ne respecte pas des dispositions fixées en vertu de l'article 13, al. 1er, ou
5) donne des renseignements faux ou trompeurs à la Commission d'appel ou passe sous silence des faits essentiels

sera passible d'une amende, à moins qu'elle soit passible d'une peine plus grave en vertu de toute autre disposition de la législation.

Al. 2. Les dispositions prises en vertu de l'article 7, Nos 2 et 3, peuvent prévoir une amende en cas d'infraction, soit intentionellement, soit par faute lourde, à ces dispositions.

Al. 3. Si l'infraction est le fait d'une société anonyme, une société à responsabilité limité, une société coopérative ou similaire, la société en tant que telle est passible d'une amende. Si l'infraction est le fait de l'Etat, d'une commune ou d'une collectivité communale, l'Etat, la commune ou la collectivité communale seront passibles d'une amende.

Al. 4. La responsabilité pénale se prescrit après cinq ans.

Art. 21. Les représentants du Conseil de la concurrence peuvent, sur ordonnance rendue par le tribunal et après établissement de leur identité:

1) prendre connaissance et copie de tout renseignement utile au contrôle légal sur place, y compris des comptes, des documents comptables, des livres, d'autres actes commerciaux et des données enregistrées par vois électronique, et
2) obtenir accès aux locaux et aux moyens de transport d'une entreprise, d'un groupement, etc.

Al. 2. La police prêtera son assistance à l'occasion de ces procédures. Le ministre de la justice peut, après négociations avec le ministre de l'industrie, en fixer les modalités.

Chapitre 7
Entrée en vigueur et dispositions transitoires

Art. 22. La présente loi entrera en vigueur le 1er janvier 1990.

Al. 2. En même temps, la loi sur le contrôle des monopoles et des restriction à la concurrence, cf. la loi consolidée No 108 du 11 mars 1986, et la loi sur les prix et les marges bénéficiaires, cf. la loi consolidée No 109 du 11 mars 1986, sont abrogées.

Al. 3. Les dénonciations faites conformément à l'article 6, al. 1er de la loi sur le contrôle des monopoles et des restrictions à la concurrence avant le 1er janvier 1990 seront transférées au Conseil de la concurrence.

Al. 4. Les dispositions concernant la fixation des prix, etc. et la facturation, prises selon l'article 6, al. 2, et l'article 11, al. 1er de la loi sur les prix et les marges bénéficiaires, resteront en vigueur douze mois après l'entrée en vigueur de la présente loi, ou jusqu'à leur expiration ou leur abrogation par le Conseil de la concurrence.

Al. 5. Toute violation, soit intentionnellement, soit par faute lourde, des dispositions mentionnées à l'alinéa 4 est passible d'une amende.

Art. 23. La présente loi ne s'applique ni aux Iles Féroe ni au Groenland.

Annex II

POLAND

LAW OF 24 FEBRUARY 1990 ON COUNTERACTING MONOPOLISTIC PRACTICES

In order to ensure the development of competition, to protect economic subjects from the monopolistic practices and to protect the interests of consumers, it is proclaimed as follow:

Chapter 1

GENERAL PROVISIONS

Article 1

This Law governs the rules and mode of counteracting monopolistic practices of economic subjects and their unions which exert an impact on the territory of the Republic of Poland, and also defines the organs competent in such matters.

Article 2

Whenever the Law specifies:

(1) economic subjects - these are defined as individuals and corporate bodies as well as organizational units without corporate status, conducting an economic activity;

(2) unions - these are defined as chambers, associations and other organizations associating economic subjects;

(3) arrangements - these are defined as contrary to this Law:

- (a) contracts concluded between economic subejcts or certain clauses of the contracts;
- (b) agreements in any form between two or more economic subjects or their unions;
- (c) resolutions or other acts passed by the unions of economic subjects.

(4) prices - also covering margins, commissions and price surcharges;

(5) commodities - these are defined as things, all forms of energy, services, building structures and works, securities and other property rights;

(6) a monopolistic position - this is defined as the position of an economic subject where it does not encounter any competition on the home or local market;

(7) a dominant position - this is defined as the position of an economic subject where it does not encounter substantial competition on the home or local market: it is supposed that the economic subject has a dominant position, when its market share exceeds 30%;

Article 3

1. The Law does not prejudice the sole rights resulting from the regulations governing inventions, trademarks, decorative patterns, the regulations of the Copyright Law and contracts concluded by employees and trade unions with their employers for the purpose of safeguarding the employees' rights.

2. This Law applies to licence contracts and other acts concerning the sole rights specified in paragraph 1.

Chapter 2

MONOPOLISTIC PRACTICES

Article 4

1. Prohibited are the monopolistic practices consisting of:

(1) forcing onerous contract terms which yield the economic subject, forcing them, undue benefits;

(2) making the conclusion of a contract contingent on having the other party perform another service not connected with the object of the contract, which would not otherwise be accepted or performed if there was a choice;

(3) acquiring shares or stocks of companies or assets of economic subjects when such acquisition could lead to a significant weakening of competition;

(4) having the same person combine functions of director, member of the board, supervisory council or audit commission in competing economic subjects which at least one of such subjects controls more than 10% of the market.

2. Prohibited are the monopolistic practices consisting in arrangements leading to:

(1) setting, directly or indirectly, prices and rules of their formulation between competitors in relationship with third parties;

(2) dividing the market according to territorial, commodity group or subject criteria;

(3) setting or limiting the volume of production, sales or purchases of commodities;

(4) limiting market access or eliminating from the market economic subjects not encompassed by the arrangement;

(5) setting by competitors contract terms concluded with third parties.

Article 5

Prohibited are the monopolistic practices consisting in abusing a dominant position on the market, defined in particular as:

(1) countering the formation of conditions indispensable for emergence or development of competition;

(2) dividing the market according to territorial, commodity group or subject criteria;

(3) selling commodities in a manner which leads to offering privileged status to certain economic subjects or other subjects;

(4) refusing to sell or purchase commodities in a manner discriminating certain economic subjects when there are no alternative supply sources or outlets;

(5) dishonest actions connected with price setting, including the resale prices and selling below costs of production in order to eliminate competitors.

Article 6

Prohibited are the monopolistic practices defined in articles 4 and 5 unless they are necessary to conduct an economic activity and do not induce a substantial limitation of competition.

Article 7

1. Economic subjects in a monopolistic position are also prohibited from:

(1) limiting production, sales or purchase of commodities, despite the capacities they have, in particular when it leads to price increase;

(2) refraining from the sale of commodities to increase prices;

(3) asking extremely high prices.

2. The Interdictions defined in paragraph 1 also concern economic subjects in a dominant position if their market share and the practices used by them result in similar effects to those of the behaviour of economic subjects being in a monopolistic position.

Article 8

1. Should there by an ascertainment of the monopolistic practices specified in Articles 4, 5 and 7, the Anti-Monopoly Office will issue a decision ordering that such practices be ceased and will define the terms for such cession.

2. The contracts concluded in contravention of Articles 4, 5 and 7 are wholly or partially void.

3. When the monopolistic practices defined in paragraph 1 have led to price increase, the Anti-Monopoly Office may issue a decision to lower the prices. In this decision, for the period when higher prices were charged,

the Anti-Monopoly Office may also define the undue amount and a supplementary amount; the rules of Article 20 of the Law of 26th February 1982 on Prices (Dz.U. of 1988 No.27, Item 195) apply, respectively.

Article 9

1. The Anti-Monopoly Office may issue a decision prohibiting the execution of an arrangement which:

(1) introduces an assortment, specialization of production, or sale of commodities; or,

(2) stipulates joint sales or joint purchase of commodities, when such an arrangement prejudices the interests of other economic subjects or consumers.

2. The Anti-Monopoly Office will issue a decision prohibiting the execution of the arrangement specified in paragraph 1 when it leads to a significant restriction of competition or conditions for its emergence on a given market, and yields no economic benefits consisting in:

(1) significant lowering of production or sale costs; or,

(2) improving the quality of commodities.

Article 10

1. The decision of the Anti-Monopoly Office issued by virtue of Article 8 (paragraphs 1 and 3) and Article 9, may be appealed against at the Voivodship Court in Warsaw (Anti-Monopoly Court) within two weeks from the day of receipt of the decision.

2. The appelate procedure concerning the decisions of the Anti-Monopoly Office follows the rules of the Civil procedure Code on the procedure in economic cases.

3. The Anti-Monopoly Office may stipulate the immediate execution of the decision.

Chapter 3

Exerting an impact on shaping organization structures of economic subjects

Article 11

1. The intention to merge and transform economic subjects is amenable to notification of the Anti-Monopoly Office. The intention to establish an economic subject should be notified when the subject could gain a dominant position on the market or when one of the parties establishing a new economic subject is in such a position.

2. Within two months from the notification, the Anti-Monopoly Office may issue a decision prohibiting a merger, transformation or establishment of economic subjects when such a merger, transformation or establishment would give the subjects a dominant position on the market.

3. A merger, transformation or establishment of economic subjects can proceed when the Anti-Monopoly Office fails to issue a decision prohibiting such a merger, transformation or establishment, during the time stipulated in paragraph 2.

4. The provisions in paragraphs 1 to 3 do not apply to individuals acting as economic subjects.

5. Under other regulations the Registration Court will refuse to enter an economic subject in the register when, with respect to the subject, the Anti-Monopoly Office has issued a decision prohibiting a merger, transformation or establishment during the time stated in paragraph 2. This clause does not apply when the subject claims that the Anti-Monopoly Office has notified him or it about the lack of objections to the proposed merger, transformation or establishment within the time specified in paragraph 2.

6. The Council of Ministers defines the requirements to be met by the notification of the intended merger, transformation or establishment of economic subjects in the form of an order.

Article 12

1. State enterprises, cooperatives and companies of commercial law having a dominant position on the market can be divided up or liquidated when they permanently limit competition or conditions of its existence.

2. Should it be ascertained that the economic subjects meet the requirements defined in paragraph 1 and have a dominant position on the market, then the Anti-Monopoly Ofifce may issue a decision ordering the division of the enterprise or cooperative, or the liquidation of the company, defining the terms and the deadline for such division or liquidation.

3. Such a decision is to be executed by the founding organ of a state enterprise or by the cooperative or company authorities and is to proceed in accordance with the applicable regulations governing the manner of the division or liquidation of a given subject; such a division does not require the consent or opinions stipulated in these regulations.

4. When a dominant position of a subject on the market is ascertained, the Anti-Monopoly Office may issue a decision ordering the limitation of its economic activity, defining the terms and deadline for such limitation.

5. The provision of paragraph 1 does not preclude the possibility of division and liquidation of economic subjects in the terms of other laws.

Article 13

The decision of the Anti-Monopoly Office under the terms of Article 11 paragraph 2 and Article 12 paragraphs 2 and 4, may be appealed against at the Anti-Monopoly Court. The provisions of Article 10 paragraphs 2 and 3 apply respective.

Chapter 4

Responsibility for application of monopolistic practices.

Article 14

1. In the decisions defined in Article 10 paragraph 1, the Anti-Monopoly Office may rule a fine payable to the state budget. This fine does not apply when the Anti-Monopoly Office issued a decision stating the undue amount and the supplementary amount defined in Article 8 paragraph 3.

2. The fine defined in paragraph 1 amounts up to 15% of the revenue of the penalized economic subject earned in the preceding fiscal year. In calculating this fine, the revenues of the economic subject are estimated after deducting the turnover tax.

3. The fine defined in paragraph 1 is payable out of the income after tax or other form of the excess of revenue over expenditure, less taxes.

4. The fine defined in paragraphs 1 to 3 cannot be imposed when a year has elapsed since the end of the year in which the monopolistic practices ceased.

Article 15

1. When an economic subject fails to honour the decisions defined in Article 8 paragraphs 1 and 3, Article 9, Article 11 paragraph 2, or a court sentence changing such a decision, it is obliged to pay for each commenced month of failure to execute the decision or court sentence in the specified time, a fine. The fine amounts to 1% of the revenues less the turnover tax earned in the month when the highest revenues were attained in a given fiscal year. The decision in this question is made by the Anti-Monopoly Office, with the reservation that it cannot be issued when three years have elapsed since the date of the decision defined in the proceding sentence.

2. When an economic subject fails to execute the decisions defined in Article 12, paragraphs 2 and 4, or a court sentence changing such decisions, the fine is from 1 to 10%; the provision of paragraph 1 applies respectively.

3. The fines defined in paragraphs 1 and 2 are payable to the state budget.

4. The provisions of Article 10 and Art. 14 paragraph 3 apply respectively.

Article 16

1. When the manager of an economic subject fails to execute the decisions issued by virtue of this Law or court sentences, the Anti-Monopoly Office may issue a decision to penalize the person with a fine, but in no case should it exceed that person's six months' salary.

2. The provisions of paragraph 1 do not apply when the function of the manager of an economic subject is performed by a person who runs his/her own business.

3. The provisions of Article 10 apply respectively.

Chapter 5

ANTI-MONOPOLY BODIES

Article 17

The Anti-Monopoly Office has been established as the central state administration body charged with counteracting monopolistic practices, subordinate to the Council of Ministers.

2. The Anti-Monopoly Office is headed by a President appointed and recalled by the Head of the Council of Ministers (Prime Minister).

3. The Vice-President of the Anti-Monopoly Office is appointed and recalled by the Prime Minister at the request of the President of the Anti-Monopoly Office.

4. The organization of the Anti-Monopoly Office is defined in the Statute passed by the Council of Ministers.

Article 18

1. The President of the Anti-Monopoly Office may establish branch offices of the Anti-Monopoly Office and define their place, territorial and substantive scope of operations.

2. Branch offices of the Anti-Monopoly Office are headed by directors appointed and recalled by the President of the Anti-Monopoly Office.

3. The deputy directors of the branch offices of the Anti-Monopoly Office are appointed and recalled by the President of the Anti-Monopoly Office at the request of the directors of the branch offices concerned.

Article 19

1. The scope of duties of the Anti-Monopoly Office covers:

(1) supervising the observance of the regulations on counteracting monopolistic practices by economic subjects;

(2) monitoring the formation of prices under conditions of limited competition;

(3) issuing, in cases defined by this Law, decisions on counteracting monopolistic practices, shaping the organizational structures of economic subjects and decisions defining the responsibility of subjects for such practices;

(4) registering economic subjects having a monopolistic position on the home market;

(5) doing research on the state of concentration of the economy and presenting to the subjects concerned the suggested actions to attain a balanced market;

(6) drafting or advising on draft proposals for new Laws concerning monopolistic practices; development of competition or conditions of their existence;

(7) preparing governmental proposals for the policy of development of competition;

(8) performing other duties stipulated under this Law or other laws.

2. The decisions defined in paragraph 1 point 3 are signed by the President of the Anti-Monopoly Office or a person duly authorized by the President.

Article 20

1. When requested by the Anti-Monopoly Office performing a check, economic subjects are obliged to secure the conditions to perform such a check.

2. The check referred to in Article 19 paragraph 1 point 1 is to determine whether the checked economic subject respects the regulations on counteracting monopolistic practices, or should such regulations be infringed and decisions issued or sentences passed, whether the decisions or sentences have been duly executed.

3. Staff members of the Anti-Monopoly Office empowered to carry out checks have the right to:

(1) enter the premises of the inspected subject;

(2) look into documents of the inspected subject and demand copies and abstracts of documents;

(3) demand expalantions, also in writing, from employees of the inspected subject;

(4) collect data and information on operations of the inspected subject, also from other organizational bodies without additional authorization;

(5) take part in meetings of the executive board of the checked subject;

(6) secure documents and other evidence;

(7) use experts and specialists advice.

4. The information received during the inspection by staff members of the Anti-Monopoly Office and persons empowered by this office is confidential.

Article 21

1. Administrative proceedings in cases provided by this Law are taken ex officio or at request of entitled proposers.

2. Entitled to demand to start administrative proceedings are:

(1) economic subjects whose interest was prejudiced or may be prejudiced by monopolistic practices as well as unions of such economic subjects;

(2) state and public inspection bodies;

(3) public institutions which protect consumers interests by statutory regulations.

3. The stipulation to start proceedings should be done in writing with justification.

Chapter 6

SPECIAL, INTERIM AND FINAL PROVISIONS

Article 22

1. Access to data of an economic subject or explanations in foreign proceedings based on a charge of actions aiming at curbing competition, may be covered by an interdiction issued by the Minister of Foreign Economic Relations.

2. An economic subject notifies the Minister of Foreign Economic Relations about proceedings instituted abroad, as defined in paragraph 1, when in the course of the proceedings the said subject has been asked to present the data or explanations.

3. The Minister of Foreign Economic Relations issues the interdiction defined in paragraph 1 if the foreign proceedings could lead to a rule or decision with negative consequences for the Polish economy or Polish economic subjects in the field of foreign trade or economic activity taking place wholly or partly on the territory of the Republic of Poland.

4. The interdiction defined in paragraph 1 may:

(1) be addressed to particular economic subjects, groups of economic subjects or their unions;

(2) relate to specific foreign proceedings or various proceedings of a given kind;

(3) cover specific data and explanations or their kinds.

5. Regulations of paragraphs 1 to 4 apply equally to data and explanations presented by economic subjects to Polish jurisdiction institutions as part of legal assistance performed at the request of institutions of foreign countries in terms of international agreements.

Article 23

When an economic subject makes an appeal against a decision of the Anti-Monopoly Office to the Anti-Monopoly Court, in cases stipulated in this law, the party has not a right to legal measures to change the decisions stipulated in the Administrative Proceeding Code, in particular in cases of resumption, annulment, change or ascertainment that decisions are null and void.

Article 24

In the Law of 25 February 1958 on State Inspection of Trade (Dziennik Ustaw of 1969, No. 26, item 206 and of 1975, No. 16, item 91) in Article 1 there is an amendment added as paragraph 4 reading:

> "(4) supervision of observance of regulations on counteracting monopolistic practices by the economic subjects conducting an economic activity in the field of trade."

Article 25

1. The Law "Code of Civil Procedures" stands amended as follows:

(1) Section IVa of title VII of volume one part one:
The words "Proceeding in economic questions" are now supplemented with the words: "Chapter 1: General regulations";

(2) Article 479.1 in # 2 paragraph 3: the words "in national economy" stand deleted;

(3) Article 479.3 in # 1 after the word "local" it is added "or the Anti-Monopoly Court";

(4) Article 479.27 is now followed by Chapter 2, reading:

"Chapter 2.
Proceedings in cases concerning counteracting monopolistic practices.

Article 479.28
1. Decisions of the Anti-Monopoly Office or its branch office may be appealed against at the Voivodship Court Anti-Monopoly Court within two weeks from receipt of such a decision."

2. The court will reject an appeal lodged after that deadline.

Article 479.29.
Paragraph 1. The Anti-Monopoly Office transfers the appeal along with the files of the case to the court without delay.

Paragraph 2. Should the Anti-Monopoly Office consider the appeal justified, it may, without conveying the records to the court, annul or change its decision in its entirety or in part, about which it notifies the plaintiff without delay, sending a new decision, which the plaintiff may appeal against.

Article 27

In the Law of 20 June 1985: The Law on the system of general courts (Dz.U. No. 31, item 137, and of 1989 No. 4, item 24 and No. 33, item 175, and No. 73, item 436) Article 19.1 is now followed by article 19.2, reading:

> "Article 19.2. The Minister of Justice will establish (in the form of a ruling) a separate anti-monopoly unit (the Anti-Monopoly Court) in the Voivodship court in Warsaw.

Article 28

In Article 3, paragraph 1 point 4 stands deleted from the Law of 17 May, 1989, on the Fund for Market Development and Trade Demonopolisation (Dz.U. No.30, item 159).

Article 29

In Article 2, paragraph 2 point 5 stand deleted from the Law of 24 May 1989 on considerations of economic cases by courts (Dz.U. No. 33, item 175 and No 41, item 229).

Article 30

1. The cases considered by the Minister of Finance without a binding resolution until the day of entry into force of this Law are to be transferred to the Anti-Monopoly Office for further consideration.

2. Appeals against the decisions of the Minister of Finance issued prior to the day of entry into force of this Law are reviewed by the Supreme Administrative Court in accordance with earlier regulations. Should such a decision be annuled, the Supreme Court transfers the case for consideration to the Anti-Monopoly Office.

3. Resumption of proceedings, annulment, change or ascertainment that a decision issued by the Minister of Finance prior to the day of entry into force of this Law is null and void, is carried out in accordance with the previous regulations in force, with the reservation that it is the Anti-Monopoly Office which should consider the case.

Article 31

Whenever other regulations specify an anti-monopoly body, this is defined as The Anti-Monopoly Office.

Article 32

The Law of 28 January 1987 on counteracting monopolistic practices in the national economy (Dziennik Ustaw of 1987, No. 3, item 18; and of 1989, No. 10, item 57, No. 30, item 159 and No 35, item 192) is rescinded.

Article 33

The Law comes into force 30 days after its publication.

Article 479.30.
An appeal against a decision of the Anti-Monopoly Office should meet the requirements set for a process document and include a designation of the appealed decision, indication of evidence with justification, and also include an application for annulment or change of the decision in its entirety or in part.

Article 479.31.
Paragraph 1. In questions involving the counter-acting of monopolistic practices, the Anti-Monopoly Office and the subject concerned are also parties.

Paragraph 2. The subject concerned is the one whose rights or duties depend on ruling at the trial. If the subject concerned has not been called to participate in the case, it will be called by the court on application of the party concerned or ex-oficio.

Article 479.32.
An employee of the Anti-Monopoly Office may be empowered to represent the Office.

Article 479.33.
Should a decision of the Anti-Monopoly Office be appealed against, the court may suspend the execution of the decision at the request of the plaintiff, until the case is resolved. Such a ruling may be issued at a closed session.

Article 479.34.
Paragraph 1. The court rejects an appeal against a decision of the Anti-Monopoly Office, if it finds no substantiation to consider it.

Paragraph 2. Should the appeal be accepted, the court either annuls the questioned decision or changes it in its entirety or in part and rules on the substance of the question involved.

Article 479.35.
The decision of the Anti-Monopoly Court are legally valid. "

Article 26

The following changes are made in the Law of 29 December 1982, on the office of the Minister of Finance and the treasury offices and chambers (Dziennik Ustaw No. 45, item 289; of 1985, No. 12, item 50; of 1987, No. 3, item 18 and No. 33, item 180; and of 1988, No. 16, item 112, and No. 19, item 32).

(1) point 11 stands deleted from Article 2;

(2) Article 5a stand deleted.

Anexo III

ESPAÑA

LEY 16/1989, DE 17 DE JULIO (JEFATURA DEL ESTADO), DE DEFENSA DE LA COMPETENCIA

(«BOE» núm. 170, de 18 de julio de 1989)

JUAN CARLOS I

REY DE ESPAÑA

A todos los que la presente vieren y entendieren,

Sabed: Que las Cortes Generales han aprobado y Yo vengo en sancionar la siguiente Ley:

EXPOSICION DE MOTIVOS

La competencia, como principio rector de toda economía de mercado, representa un elemento consustancial al modelo de organización económica de nuestra Sociedad y constituye, en el plano de las libertades individuales, la primera y más importante forma en que se manifiesta el ejercicio de la libertad de empresa. La defensa de la competencia, por tanto, de acuerdo con las exigencias de la economía general y, en su caso, de la planificación, ha de concebirse como un mandato a los poderes públicos que entronca directamente con el artículo 38 de la Constitución.

La presente Ley responde a ese objetivo específico: garantizar la existencia de una competencia suficiente y protegerla frente a todo ataque contrario al interés público, siendo asimismo compatible con las demás leyes que regulan el mercado conforme a otras exigencias jurídicas o económicas, de orden público o privado.

La Ley se asienta en los sólidos pilares de la experiencia. Por una parte se inspira en las normas comunitarias de política de competencia, que han desempeñado un papel trascendental en la creación y funcionamiento del mercado común. Y, por otra parte, nace con el propósito de superar los defectos que frustraron la plena aplicación de la Ley 110/1963, de 20 de julio, de Represión de Prácticas Restrictivas de la Competencia, que ahora se deroga.

Bajo el título primero, «De la libre competencia», se regula en el capítulo primero, «De los acuerdos y prácticas restrictivas o abusivas», un sistema de control flexible de los acuerdos que limitan la competencia en el mercado nacional, y se prohíbe tanto el ejercicio abusivo del poder económico como aquellas conductas unilaterales que por medios desleales sean capaces de falsear sensiblemente la competencia. En el capítulo segundo, «De las concentraciones económicas», se establece un régimen de control de aquellas que, por su importancia y efectos, pudieran alterar la estructura del mercado nacional en forma contraria al interés público. Y en el capítulo tercero, «De las ayudas públicas», se instituye un sistema que permitirá analizar éstas con criterios de competencia y, llegado el caso, prevenir sus efectos indeseables desde la perspectiva de los intereses generales.

La aplicación de la Ley, en cuanto se trata de garantizar el orden económico constitucional en el sector de la economía de mercado, desde la perspectiva de la defensa de los intereses públicos, se encomienda en el título segundo a órganos administrativos: El Tribunal de Defensa de la Competencia, con funciones de resolución y, en su caso, de propuesta, y el Servicio de Defensa de la Competencia, al que se encarga la instrucción de los expedientes. Estos últimos tienen carácter especial, tanto por la esencial complejidad de la materia como por la precisión de dotar al sistema de la independencia necesaria respecto de la Administración activa, todo ello sin perjuicio del control judicial de sus actos.

El procedimiento aplicable, que se contempla en el título tercero, acoge los principios de economía, celeridad y eficacia, así como el de garantía de la defensa de los administrados, e incluye aquellos trámites especiales demandados por su propia naturaleza, previéndose la intervención, en determinados supuestos, de las Comunidades Autónomas y del Consejo de las Asociaciones de los Consumidores.

Por último se establece un régimen de sanciones que garantiza el cumplimiento de la Ley, tanto en sus aspectos formales como en los sustantivos.

TITULO PRIMERO

De la libre competencia

CAPITULO PRIMERO

De los acuerdos y prácticas restrictivas o abusivas

SECCIÓN PRIMERA: DE LAS CONDUCTAS PROHIBIDAS Y DE LAS AUTORIZADAS

Artículo uno.-*Conductas prohibidas*

1. Se prohíbe todo acuerdo, decisión o recomendación colectiva, o práctica concertada o conscientemente paralela, que tenga por objeto, produzca o pueda producir el efecto de impedir, restringir, o falsear la competencia en todo o en parte del mercado nacional y, en particular, los que consistan en:

a) La fijación, de forma directa o indirecta, de precios o de otras condiciones comerciales o de servicio.

b) La limitación o el control de la producción, la distribución, el desarrollo técnico o las inversiones.

c) El reparto del mercado o de las fuentes de aprovisionamiento.

d) La aplicación, en las relaciones comerciales o de servicio, de condiciones desiguales para prestaciones equivalentes que coloquen a unos competidores en situación desventajosa frente a otros.

e) La subordinación de la celebración de contratos a la aceptación de prestaciones suplementarias que, por su naturaleza o con arreglo a los usos de comercio, no guarden relación con el objeto de tales contratos.

2. Son nulos de pleno derecho los acuerdos, decisiones y recomendaciones que estando prohibidos en virtud de lo dispuesto en el número 1, no estén amparados por las exenciones previstas en la presente Ley.

Artículo dos.-*Conductas autorizadas por Ley*

1. Las prohibiciones del artículo 1.º no se aplicarán a los acuerdos, decisiones, recomendaciones y prácticas que resulten de la aplicación de una Ley o de las disposiciones reglamentarias que se dicten en aplicación de una Ley.

2. El Tribunal de Defensa de la Competencia podrá formular propuesta motivada al Gobierno, a través del Ministro de Economía y Hacienda, de modificación o supresión de las situaciones de restricción de la competencia establecidas de acuerdo con las normas legales.

Artículo tres.-*Supuestos de autorización*

1. Se podrán autorizar los acuerdos, decisiones, recomendaciones y prácticas a que se refiere el artículo 1, o categorías de los mismos, que contribuyan a mejorar la producción o la comercialización de bienes y servicios, o a promover el progreso técnico o económico, siempre que:

a) Permitan a los consumidores o usuarios participar de forma adecuada de sus ventajas.

b) No impongan a las empresas interesadas restricciones que no sean indispensables para la consecución de aquellos objetivos, y

c) No consientan a las empresas partícipes la posibilidad de eliminar la competencia respecto de una parte sustancial de los productos o servicios contemplados.

2. Asimismo se podrán autorizar, siempre y en la medida en que se encuentren justificados por la situación económica general y el interés público, los acuerdos, decisiones, recomendaciones y prácticas a que se refiere el artículo 1, o categorías de los mismos, que:

a) Tengan por objeto defender o promover las exportaciones, en cuanto sean compatibles con las obligaciones que resulten de los Convenios internacionales ratificados por España, o

b) Tengan por objeto la adecuación de la oferta a la demanda cuando se manifieste en el mercado una tendencia sostenida de disminución de ésta, o cuando el exceso de capacidad productiva sea claramente antieconómico, o

c) Produzcan una elevación suficientemente importante del nivel social y económico de zonas o sectores deprimidos, o

d) Atendiendo a su escasa importancia, no sean capaces de afectar de manera significativa a la competencia.

Artículo cuatro.–*Autorizaciones singulares por el Tribunal*

1. El Tribunal de Defensa de la Competencia podrá autorizar los acuerdos, decisiones, recomendaciones y prácticas a que se refiere el artículo 1, en los supuestos y con los requisitos previstos en el artículo 3.

2. La autorización del Tribunal fijará la fecha a partir de la cual será efectiva, sin que pueda dicha fecha ser anterior a la de la solicitud de aquélla. Asimismo, determinará el período de tiempo por el que se otorga y podrá establecer modificaciones, condiciones u obligaciones, previa audiencia de los interesados y del Servicio de Defensa de la Competencia por un plazo común de diez días.

3. La autorización será renovada a petición de los interesados si, a juicio del Tribunal, persisten las circunstancias que la motivaron.

La autorización podrá ser modificada o revocada si se produce un cambio fundamental de las circunstancias que se tuvieron en cuenta para su concesión.

La autorización podrá ser, asimismo, revocada si sus beneficiarios incumplen las condiciones u obligaciones establecidas por el Tribunal o se comprueba que la concesión se basó en datos relevantes aportados de forma incompleta o inexacta por las partes.

En todos los casos mencionados será preceptiva la audiencia de los interesados y del Servicio.

4. En el supuesto de que tres meses después de la presentación de la solicitud de autorización de acuerdos, decisiones, recomendaciones o prácticas, el Tribunal no haya notificado ninguna decisión al respecto, las empresas partícipes podrán proceder a su aplicación provisional. Si los acuerdos no fuesen autorizados por el Tribunal, éste fijará en su resolución la fecha a partir de la cual ha de cesar dicha aplicación, sin que se puedan producir efectos retroactivos con respecto al acuerdo notificado por el período de aplicación provisional.

Artículo cinco.–*Exenciones por categorías*

1. Mediante Reglamentos de exención, en cuya elaboración informará preceptivamente el Tribunal de Defensa de la Competencia, el Gobierno podrá autorizar las categorías de acuerdos, decisiones, recomendaciones, prácticas concertadas o conscientemente paralelas previstas en el artículo 3.1, cuando:

a) Participen únicamente dos empresas e impongan restricciones en la distribución y/o suministro de determinados productos para su venta o reventa, o en relación con la adquisición o utilización de derechos de propiedad industrial o intelectual, o de conocimientos secretos industriales o comerciales, o

b) Tengan únicamente por objeto la elaboración y aplicación uniforme de normas o tipos, o la especialización en la fabricación de determinados productos, o la investigación y el desarrollo en común, o

c) Tengan por objeto o efecto aumentar la racionalidad y competitividad de las Empresas, especialmente de las pequeñas y medianas.

2. Asimismo, mediante Reglamentos de exención, en que informará preceptivamente el Tribunal de Defensa de la Competencia, el Gobierno podrá autorizar las categorías de acuerdos, decisiones, recomendaciones y prácticas a que se refiere el artículo 3.2.

Artículo seis.–*Abuso de posición dominante*

1. Queda prohibida la explotación abusiva por una o varias empresas de su posición de dominio en todo o en parte del mercado nacional.

2. El abuso podrá consistir, en particular, en:

a) La imposición, de forma directa o indirecta, de precios u otras condiciones comerciales o de servicio no equitativos.

b) La limitación de la producción, la distribución o el desarrollo técnico en perjuicio injustificado de las Empresas o de los consumidores.

c) La negativa injustificada a satisfacer las demandas de compra de productos o de prestación de servicios.

d) La aplicación, en las relaciones comerciales o de servicio, de condiciones desiguales para prestaciones equivalentes, que coloquen a unos competidores en situación desventajosa frente a otros.

e) La subordinación de la celebración de contratos a la aceptación de prestaciones suplementarias que, por su naturaleza o con arreglo a los usos de comercio, no guarden relación con el objeto de tales contratos.

3. Se aplicará también la prohibición a los casos en que la posición de dominio en el mercado de una o de varias empresas haya sido establecida por disposición legal.

Artículo siete.–*Falseamiento de la libre competencia por actos desleales*

El Tribunal de Defensa de la Competencia conocerá, en los términos que la presente Ley establece para las conductas prohibidas, de los actos de competencia desleal que por falsear de manera sensible la libre competencia, en todo o en parte del mercado nacional, afectan al interés público.

Artículo ocho.–*Corresponsabilidad de las empresas controladoras que ejercen influencia dominante*

A los efectos de la aplicación de esta Ley, se entiende que las conductas de una empresa previstas en la misma, son también imputables a la empresa que la controla, cuando el comportamiento económico de aquélla es determinado por ésta.

SECCIÓN SEGUNDA: DE LAS SANCIONES

Artículo nueve.–*Intimaciones del Tribunal*

Quienes realicen actos de los descritos en los artículos 1, 6 y 7 podrán ser requeridos por el Tribunal de Defensa de la Competencia para que cesen en los mismos y, en su caso, obligados a la remoción de sus efectos.

Artículo diez.–*Multas sancionadoras*

1. El Tribunal podrá imponer a los agentes económicos, empresas, asociaciones, uniones o agrupaciones de aquellas que, deliberadamente o por negligencia, infrinjan lo dispuesto en los artículos 1, 6 y 7, o dejen de cumplir una condición u obligación prevista en el artículo 4.2, multas de hasta 150.000.000 de pesetas, cuantía que podrá ser incrementada hasta el 10 por 100 del volumen de ventas correspondiente al ejercicio económico inmediato anterior a la resolución del Tribunal.

2. La cuantía de las sanciones se fijará atendiendo a la importancia de la infracción, para lo cual se tendrá en cuenta:

a) La modalidad y alcance de la restricción de la competencia.
b) La dimensión del mercado afectado.
c) La cuota de mercado de la empresa correspondiente.
d) El efecto de la restricción de la competencia sobre los competidores efectivos o potenciales, sobre otras partes en el proceso económico y sobre los consumidores y usuarios.
e) La duración de la restricción de la competencia.
f) La reiteración en la realización de las conductas prohibidas.

3. Además de la sanción que corresponda imponer a los infractores, cuando se trate de una persona jurídica, se podrá imponer una multa de hasta 5.000.000 de pesetas a sus representantes legales, o a las personas que integran los órganos directivos que hayan intervenido en el acuerdo o decisión.

Quedan excluidas de la sanción aquellas personas que, formando parte de órganos colegiados de administración, no hubieran asistido a las reuniones o hubieran votado en contra o salvando su voto.

4. No se impondrán multas por infracción del artículo 1, si se solicitare la autorización prevista en el artículo 4, por las conductas a que se refiere la petición realizadas en el período comprendido entre la presentación de la solicitud y la decisión sobre la misma. Lo anterior no se aplicará cuando el Tribunal, tras un examen provisional de la solicitud, hubiera adoptado una decisión oponiéndose a la ejecución de los actos que constituyen su objeto.

Artículo once.–*Multas coercitivas*

El Tribunal, independientemente de las multas sancionadoras, podrá imponer a los agentes económicos, empresas, asociaciones, uniones o agrupaciones de éstas, multas coercitivas de 10.000 a 150.000 pesetas, reiteradas por lapsos de tiempo que sean suficientes para cumplir lo ordenado con el fin de obligarlas a la cesación de una acción prohibida, conforme a lo dispuesto en esta Ley, o a la remoción de los efectos de una infracción.

Una vez cumplida la resolución del Tribunal se podrá reducir la cuantía de la multa resultante de su decisión inicial, atendiendo a las circunstancias concurrentes.

Artículo doce.–*Prescripción de las infracciones y de las sanciones*

1. Prescribirán:

a) A los cinco años, las infracciones previstas en este texto legal. El término de la prescripción comenzará a correr desde el día en que se hubiera cometido la infracción.

b) A los tres años, la acción para exigir el cumplimiento de las sanciones.

2. La prescripción se interrumpe por cualquier acto del Tribunal o del Servicio de Defensa de la Competencia, con conocimiento formal del interesado, tendente a la investigación, instrucción o persecución de la infracción.

Artículo trece.–*Otras responsabilidades y resarcimiento de daños y perjuicios*

1. Las sanciones a que se refiere la presente Ley se entenderán sin perjuicio de otras responsabilidades que en cada caso procedan.

2. La acción de resarcimiento de daños y perjuicios, fundada en la ilicitud de los actos prohibidos por esta Ley, podrá ejercitarse por los que se consideren perjudicados, una vez firme la declaración en vía administrativa y, en su caso, jurisdiccional. El régimen sustantivo y procesal de la acción de resarcimiento de daños y perjuicios es el previsto en las leyes civiles.

CAPITULO II

De las concentraciones económicas

Artículo catorce.–*Ambito de aplicación*

Todo proyecto u operación de concentración de empresas o de toma de control de una o varias empresas por parte de otra persona, empresa o grupo de empresas, siempre que afecte o pueda afectar al mercado español y especialmente mediante la creación o reforzamiento de una posición de dominio, podrá ser remitido por el Ministro de Economía y Hacienda al Tribunal de Defensa de la Competencia para su informe:

a) Cuando se adquiera o se incremente una cuota igual o superior al 25 por 100 del mercado nacional, o de una parte sustancial del mismo, de un determinado producto o servicio, o

b) Cuando la cifra del volumen de ventas global en España del conjunto de los partícipes supere en el último ejercicio contable la cantidad de 20.000.000.000 de pesetas.

Artículo quince.–*Notificación voluntaria y autorización tácita*

1. Todo proyecto u operación de concentración de empresas o de toma de control podrá ser notificado voluntariamente al Servicio de Defensa de la Competencia por una o varias de las empresas partícipes, previamente o hasta tres meses después de su realización.

La notificación previa no implicará suspensión en la ejecución de la operación antes de su autorización expresa o tácita, aunque en todo caso dicha operación quedará sujeta a lo dispuesto en el artículo 17.

2. Se determinará reglamentariamente la forma y contenido de la notificación, de modo que se garantice la confidencialidad del hecho de su presentación y, en su caso, la de aquella parte de la misma que deba ser reservada.

En la notificación constarán los datos necesarios para poder apreciar la naturaleza y efectos de la operación y, en particular, los datos identificativos de los sujetos intervinientes, los balances de la empresa y/o grupos de empresas y sus cuotas respectivas de mercado, la forma y desarrollo de la operación y la situación económica y jurídica resultante de la misma.

3. La notificación de las operaciones de adquisición de acciones admitidas a negociación en una Bolsa de Valores cuando, de acuerdo con lo dispuesto en el artículo 60 de la Ley 24/1988 del Mercado de Valores, sea preceptiva la realización de una oferta pública de adquisición, será objeto de procedimiento específico que se determinará reglamentariamente.

4. El Ministro de Economía y Hacienda remitirá al Tribunal los expedientes de aquellos proyectos u operaciones de concentración o de toma de control notificados voluntariamente por los interesados que considere pueden obstaculizar el mantenimiento de una competencia efectiva en el mercado, para que aquél, previa audiencia, en su caso, de los interesados dictamine en el plazo de tres meses.

Se entenderá que la Administración no se opone a la operación si transcurrido un mes desde la notificación voluntaria al Servicio, el Tribunal no hubiera tenido conocimiento de la misma, o si éste no hubiera emitido el dictamen previsto en el párrafo anterior en el plazo indicado en el mismo.

El Servicio notificará a los interesados la fecha en que fueren remitidas las actuaciones al Tribunal de Defensa de la Competencia.

Solamente se beneficiarán de las autorizaciones tácitas y plazos señalados en este artículo las operaciones notificadas voluntariamente al Servicio de Defensa de la Competencia.

Artículo dieciséis.-*Informe del Tribunal*

La apreciación de si un proyecto u operación de concentración o toma de control puede obstaculizar el mantenimiento de la competencia efectiva en el mercado se basará en un análisis de sus efectos restrictivos, previsibles o constatados, atendiendo principalmente a las siguientes circunstancias:

a) Delimitación del mercado relevante.
b) Su estructura.
c) Las posibilidades de elección de los proveedores, distribuidores y consumidores o usuarios.
d) El poder económico y financiero de las empresas.
e) La evolución de la oferta y la demanda.
f) La competencia exterior.

El Tribunal podrá considerar asimismo la contribución que la concentración o toma de control pueda aportar a la mejora de los sistemas de producción o comercialización, al fomento del progreso técnico o económico, a la competitividad internacional de la industria nacional o a los intereses de los consumidores o usuarios y si esta aportación es suficiente para compensar los efectos restrictivos sobre la competencia.

Artículo diecisiete.-*Competencia del Gobierno*

El Tribunal de Defensa de la Competencia remitirá su dictamen al Ministro de Economía y Hacienda para que lo eleve al Gobierno, que en el plazo máximo de tres meses podrá decidir:

a) No oponerse a la operación de concentración.
b) Subordinar su aprobación a la observación de condiciones que aporten al progreso económico y social una contribución suficiente para compensar los efectos restrictivos sobre la competencia.
c) Declararla improcedente, estando facultado para:

c.1) Ordenar que no se proceda a la misma, en caso de que no se hubiera iniciado.
c.2) Ordenar las medidas apropiadas para el establecimiento de una competencia efectiva, incluida la desconcentración o la cesación de control.

Artículo dieciocho.-*Sanciones*

De no cumplirse lo ordenado en aplicación del artículo 17, el Gobierno, sin perjuicio de la aplicación de las medidas de ejecución previstas en el ordenamiento jurídico, podrá imponer a cada una de las empresas afectadas una multa de hasta el 10 por 100 de su respectivo volumen de ventas en España.

CAPITULO III

De las ayudas públicas

Artículo diecinueve.-*Competencia del Tribunal*

1. El Tribunal de Defensa de la Competencia, a solicitud del Ministro de Economía y Hacienda, podrá examinar las ayudas otorgadas a las empresas con cargo a recursos públicos, en relación con sus efectos sobre las condiciones de competencia.

A la vista del dictamen del Tribunal, el Ministro podrá proponer a los poderes públicos la supresión o la modificación de ayudas, así como, en su caso, las demás medidas conducentes al mantenimiento o al restablecimiento de la competencia.

2. A los efectos previstos en el número anterior el Tribunal podrá dirigir comunicaciones o requerimientos a las empresas, así como recabar de las Administraciones Públicas, para que le informen sobre las aportaciones de recursos públicos o las ventajas financieras concedidas u obtenidas.

TITULO II

De los órganos de defensa de la competencia

CAPITULO PRIMERO

Del Tribunal de Defensa de la Competencia

SECCIÓN PRIMERA: DE LA ORGANIZACIÓN DEL TRIBUNAL

Artículo veinte.–*Adscripción orgánica del Tribunal; sede y ámbito territorial de su competencia*

El Tribunal de Defensa de la Competencia, adscrito orgánicamente al Ministerio competente por razón de la materia, ejerce sus funciones con plena independencia y sometimiento al ordenamiento jurídico.

Tiene su sede en la capital del Estado, su competencia se extiende a todo el territorio español y goza del tratamiento que según la tradición le corresponde.

Artículo veintiuno.–*Composición*

1. El Tribunal de Defensa de la Competencia está integrado por un Presidente y por ocho Vocales, nombrados por el Gobierno a propuesta del Ministro de Economía y Hacienda, entre juristas, economistas y otros profesionales de prestigio con más de quince años de ejercicio profesional.
2. El nombramiento del Presidente y los Vocales será por seis años renovables. La renovación de los Vocales se hará por mitades cada tres años.
3. Los Vocales del Tribunal tendrán la consideración de altos cargos. Cuando el nombramiento recaiga en personas al servicio de las Administraciones Públicas en activo, éstas pasarán a la situación de servicios especiales o equivalente.
4. El Tribunal elegirá, entre los Vocales, un Vicepresidente, el cual sustituirá al Presidente en caso de vacante, ausencia o enfermedad.
5. El Tribunal estará asistido por un Secretario.

Artículo veintidós.–*Incompatibilidades de sus miembros*

1. Los miembros del Tribunal de Defensa de la Competencia ejercerán su función con dedicación absoluta y tendrán las incompatibilidades establecidas con carácter general para los altos cargos de la Administración del Estado.
2. Se exceptúa de lo anterior el desempeño ocasional de cargos o actividades en Organismos internacionales en representación o por encargo del Gobierno español, por los que no se percibirá retribución alguna salvo las dietas e indemnizaciones reglamentarias que pudieran corresponder.

Artículo veintitrés.–*Causas de cese y suspensión en el ejercicio del cargo*

1. El Presidente, el Vicepresidente y los Vocales del Tribunal de Defensa de la Competencia cesarán en su cargo: a) Por renuncia; b) Por expiración del término de su mandato; c) Por incompatibilidad sobrevenida; d) Por haber sido condenado por delito doloso; e) Por incapacidad permanente; f) Por cese, determinado por incumplimiento grave de los deberes de su cargo a propuesta de tres cuartas partes del Tribunal.
2. El Presidente, el Vicepresidente y los Vocales del Tribunal de Defensa de la Competencia sólo podrán ser suspendidos en el ejercicio de su cargo: a) Cuando se dictare contra ellos auto de prisión o de procesamiento por delito doloso; b) Cuando se acuerde en expediente disciplinario o de declaración de incapacidad transitoria; c) Por sentencia firme condenatoria que imponga la suspensión como pena principal o accesoria.

SECCIÓN SEGUNDA: DE LAS FUNCIONES Y FACULTADES DEL TRIBUNAL

Artículo veinticuatro.–*Funcionamiento del Tribunal*

El Tribunal se entiende válidamente constituido con la asistencia del Presidente o Vicepresidente y cinco Vocales.

El Tribunal podrá actuar mediante Comisiones para la tramitación de determinados asuntos.

Los acuerdos se adoptarán por mayoría absoluta de votos de los asistentes. En caso de empate decidirá el voto de quien presida.

Artículo veinticinco.–*Competencia*

Compete al Tribunal: a) Resolver los asuntos que tiene atribuidos por esta Ley; b) Interesar la instrucción de expedientes del Servicio de Defensa de la Competencia; c) Autorizar los acuerdos, decisiones, recomendaciones y prácticas a que se refiere el artículo 1, en los supuestos y con los requisitos previstos en el artículo 3; d) Realizar las funciones de arbitraje, tanto de derecho como de equidad, que le encomienden las leyes.

Artículo veintiséis.–*Funciones consultivas y de emisión de informes*

1. También compete al Tribunal: a) Informar los anteproyectos de normas con rango de Ley que afecten a la competencia; b) Dirigir informes a cualquier poder u órgano del Estado, y c) Estudiar y someter al Gobierno las oportunas propuestas para la modificación de la Ley, conforme a los dictados de la experiencia en la aplicación del Derecho nacional y comunitario.
2. El Tribunal podrá ser consultado por las Comisiones de las Cámaras Legislativas sobre los proyectos o proposiciones de Ley y sobre cualquier otra cuestión relativa a la libre competencia.

   El Tribunal podrá también emitir informes sobre materias de libre competencia a requerimiento del Gobierno o de cualquiera de los Departamentos Ministeriales, de las Comunidades Autónomas, de las Corporaciones Locales y de las Organizaciones empresariales, sindicales o de consumidores y usuarios.
3. El Tribunal promoverá y realizará estudios y trabajos de investigación en materia de competencia.

Artículo veintisiete.–*Otras funciones*

Corresponde al Tribunal: a) Elaborar su reglamento de régimen interior, en el cual se establecerá su funcionamiento administrativo y la organización de sus servicios; b) Mantener relaciones con otros Organismos análogos; c) Resolver sobre las recusaciones, incompatibilidades y correcciones disciplinarias y apreciar la incapacidad y el incumplimiento grave de sus funciones por el Presidente, Vicepresidente y Vocales; d) Nombrar y cesar al Secretario; e) Proponer o, en su caso, informar el proyecto de plantilla del personal al servicio del Tribunal; f) Preparar el anteproyecto de presupuesto general de gastos del Tribunal, y g) Elaborar una Memoria anual.

Artículo veintiocho.–*Funciones del Presidente*

1. Son funciones del Presidente del Tribunal de Defensa de la Competencia: a) Representarlo en las relaciones con otros Organos públicos; b) Convocar el Pleno por propia iniciativa o a petición de, al menos, tres de los Vocales, y presidirlo; c) Mantener el buen orden y gobierno del Tribunal; d) Dar cuenta de las vacantes que se produzcan en el Tribunal; e) Conceder licencias y permisos a los Vocales y al personal del Tribunal; f) Ordenar los gastos, y g) Resolver las demás cuestiones no asignadas al Pleno del Tribunal.

2. El Presidente podrá delegar en el Vicepresidente aquellas facultades que considere convenientes.

Artículo veintinueve.–*Sanciones por incumplimiento del deber de suministro de datos*

1. Toda persona natural o jurídica queda sujeta al deber de colaboración con el Tribunal de Defensa de la Competencia, y está obligada a proporcionar a requerimiento de éste toda clase de datos e informaciones necesarias para la aplicación de esta Ley.

2. El Tribunal de Defensa de la Competencia podrá imponer multas de hasta 1.000.000 de pesetas a las personas físicas y jurídicas, quienes, deliberadamente o por negligencia, no le suministren datos o información o lo hagan de manera incompleta o inexacta.

CAPITULO II

Del Servicio de Defensa de la Competencia

SECCIÓN PRIMERA: DE LA ADSCRIPCIÓN Y FUNCIONES DEL SERVICIO

Artículo treinta.–*Adscripción orgánica*

El Servicio de Defensa de la Competencia estará integrado en el Ministerio competente por razón de la materia.

Artículo treinta y uno.–*Funciones*

Son funciones del Servicio de Defensa de la Competencia: a) Instruir los expedientes por conductas incluidas en esta Ley; b) Vigilar la ejecución y cumplimiento de las resoluciones que se adopten en aplicación de esta Ley; c) Llevar el Registro de Defensa de la Competencia; d) Las de estudio e investigación de los sectores económicos analizando la situación y grado de competencia de cada uno de ellos, así como la de posible existencia de prácticas restrictivas de la competencia. Como consecuencia de los estudios e investigaciones efectuadas podrá proponer la adopción de medidas conducentes a la remoción de los obstáculos en que se ampare la restricción; e) Las de información, asesoramiento y propuesta en materia de acuerdos y prácticas restrictivas, concentración y asociación de Empresas, grado de competencia en el mercado interior y exterior en relación con el nacional, y sobre las demás cuestiones relativas a la defensa de la competencia; f) Las de cooperación, en materias de competencia, con Organismos extranjeros e Instituciones internacionales.

SECCIÓN SEGUNDA: DE LA COLABORACIÓN DE LA ADMINISTRACIÓN Y DE LAS FACULTADES DEL SERVICIO DE DEFENSA DE LA COMPETENCIA

Artículo treinta y dos.–*Deberes de colaboración e información*

1. Toda persona natural o jurídica queda sujeta al deber de colaboración con el Servicio de Defensa de la Competencia, y está obligada a proporcionar a requerimiento de éste toda clase de datos e informaciones necesarias para la aplicación de esta Ley.

2. El incumplimiento de la obligación establecida en el número anterior será sancionado por el Director del Servicio con multa de 50.000 a 1.000.000 de pesetas.

Artículo treinta y tres.–*Funciones de investigación e inspección*

1. Los funcionarios debidamente autorizados por el Director del Servicio de Defensa de la Competencia podrán realizar las investigaciones necesarias para la debida aplicación de esta Ley.

2. Los funcionarios, en el curso de las inspecciones, podrán examinar, obtener copias o realizar extractos de los libros, documentos, incluso de carácter contable y, si procediera, retenerlos por un plazo máximo de diez días.

3. En sus inspecciones podrán ir acompañados de expertos o peritos en las materias sobre las que versen aquéllas.

4. La obstrucción de la labor inspectora podrá ser sancionada por el Director del Servicio con una multa continuada de hasta 150.000 pesetas diarias.

Artículo treinta y cuatro.–*Investigación domiciliaria*

1. El acceso a los locales podrá realizarse con el consentimiento de sus ocupantes o mediante mandamiento judicial.

2. Si hubiera existido consentimiento de los ocupantes, el funcionario habilitado mostrará el oficio y entregará copia en que conste su designación por el Director del Servicio de Defensa de la Competencia, los sujetos investigados, los datos, documentos y operaciones que habrán de ser objeto de la inspección, la fecha en que la actuación deba practicarse y el alcance de la investigación.

3. El mandamiento judicial lo solicitará el Director del Servicio de Defensa de la Competencia, y en el oficio se harán constar los datos previstos en el número anterior.

El Juez o Tribunal competente resolverá en el plazo máximo de cuarenta y ocho horas.

4. De todas las entradas en locales y de la inspección se levantará un acta firmada por el funcionario autorizado y por uno de sus

ocupantes, a la que se adjuntará, en su caso, la relación de documentos retenidos temporalmente.

5. El funcionario expedirá una copia del acta a nombre de la persona que haya autorizado la entrada en el local. Si la entrada e inspección se hubieran realizado en virtud de mandamiento judicial, el original del acta y los documentos retenidos, en su caso, se entregarán al Juez o Tribunal correspondiente, el cual diligenciará una copia a nombre del funcionario que ha llevado a cabo la inspección y otra a nombre del ocupante ante el cual se ha realizado la investigación. También se entregará, en su caso, al funcionario la documentación retenida.

6. Los datos o informaciones obtenidos sólo podrán ser utilizados para las finalidades previstas en esta Ley.

Sección Tercera: Del Registro de Defensa de la Competencia

Artículo treinta y cinco.–*Carácter público del Registro y actos inscribibles*

El Registro de Defensa de la Competencia será público, y en él se inscribirán los acuerdos, decisiones, recomendaciones y prácticas que el Tribunal haya autorizado y los que haya declarado prohibidos total o parcialmente. También se inscribirán las operaciones de concentración de empresas o de toma de control a que se refieren los artículos 14 y 15 de esta Ley.

A estos efectos el Tribunal dará traslado al Servicio de sus resoluciones.

TITULO III

Del procedimiento

CAPITULO PRIMERO

Del procedimiento en materia de acuerdos y prácticas prohibidas y autorizadas

Sección Primera: Del procedimiento ante el Servicio

Artículo treinta y seis.–*Iniciación del procedimiento*

1. El procedimiento se inicia por el Servicio de oficio o a instancia de parte interesada.

La denuncia de las conductas prohibidas por este texto legal es pública; cualquier persona, interesada o no, puede formularla ante el Servicio, que incoará expediente cuando se observen indicios racionales de su existencia.

2. El Servicio podrá acordar la instrucción de una información reservada antes de resolver la incoación del expediente o, en su caso, el archivo de las actuaciones.

3. En la providencia en que se acuerde la incoación del expediente se nombrará un Instructor y, en su caso, un Secretario, lo que se notificará a los interesados.

4. Iniciado el expediente, se podrá publicar una nota sucinta sobre los extremos fundamentales del mismo, al objeto de que cualquiera pueda aportar información en un plazo que no excederá de quince días.

La referida nota se publicará en el «Boletín Oficial del Estado» y, en su caso, en un diario de circulación nacional o en el de mayor tirada de la provincia en la que se realicen las prácticas objeto del expediente.

5. El Servicio, por propia iniciativa o a instancia de los interesados, podrá disponer la acumulación de expedientes cuando entre ellos exista una conexión directa.

6. El Servicio dará cuenta al Tribunal de las denuncias recibidas, del archivo de actuaciones y de las providencias de incoación de expedientes.

Artículo treinta y siete.–*Instrucción del expediente sancionador*

1. El Servicio practicará los actos de instrucción necesarios para el esclarecimiento de los hechos y la determinación de responsabilidades.

Los hechos que puedan ser constitutivos de infracción se recogerán en un pliego de concreción de hechos que se notificará a los presuntos infractores para que, en un plazo de quince días, puedan contestarlo y, en su caso, proponer las pruebas que consideren pertinentes, y, cerrado el período probatorio, efectuar en el plazo de diez días su valoración.

Las pruebas propuestas por los presuntos infractores serán recogidas en el informe del Servicio, expresando su práctica o, en su caso, denegación.

2. Los interesados podrán, en cualquier momento del procedimiento, aducir alegaciones, que serán tenidas en cuenta por el Servicio al redactar el informe a que se refiere el número siguiente.

3. El Servicio, una vez instruido el expediente, lo remitirá al Tribunal, acompañándolo de un informe que exprese las conductas observadas, sus antecedentes, los efectos producidos y la calificación que le merezcan los hechos.

4. El Servicio podrá sobreseer el expediente, previa audiencia de los interesados. Contra la resolución de sobreseimiento podrá interponerse recurso conforme a lo dispuesto por los artículos 48 y 49.

Artículo treinta y ocho.–*Instrucción del expediente de autorización*

1. El procedimiento para autorizar los acuerdos, decisiones, recomendaciones y prácticas a que se refiere el artículo 3 se iniciará a instancia de parte interesada.

2. Iniciado un expediente para la constatación de la existencia de acuerdos, decisiones, recomendaciones o prácticas prohibidas en el artículo 1, los interesados podrán pedir que se declaren autorizados de conformidad con el artículo 3.

3. En la tramitación de las autorizaciones el Servicio publicará también la nota sucinta prevista en el artículo 36.4, realizará las indagaciones necesarias, oirá a los interesados y remitirá el expediente al Tribunal, en el plazo máximo de treinta días, con la calificación que le merezca.

4. En los supuestos a que se refiere el artículo 3.1 de esta misma Ley será preceptivo el informe del Consejo de las Asociaciones de Consumidores previsto por el artículo 22.5 de la Ley 26/1984, de 19 de julio.

SECCIÓN SEGUNDA: DEL PROCEDIMIENTO ANTE EL TRIBUNAL DE DEFENSA DE LA COMPETENCIA

Artículo treinta y nueve.-*Admisión a trámite del expediente*

El Tribunal, recibido el expediente, resolverá sobre su admisión en un plazo de cinco días, teniendo en cuenta si se han aportado al mismo los antecedentes necesarios. En otro caso, interesará del Servicio la práctica de las diligencias oportunas, las cuales podrán ser complementadas con las que éste considere pertinentes.

Artículo cuarenta.-*Fase probatoria del expediente*

1. Si el Tribunal admitiese a trámite el expediente lo pondrá de manifiesto a los interesados por el plazo de quince días, dentro del cual podrán solicitar la celebración de vista y proponer las pruebas que estimen necesarias, sobre cuya pertinencia resolverá el Tribunal en el plazo de cinco días.

2. El Tribunal podrá disponer la práctica de cuantas pruebas estime procedentes, dando intervención a los interesados.

3. El resultado de las diligencias de prueba se pondrá de manifiesto a los interesados, los cuales podrán, en el plazo de diez días, alegar cuanto estimen conveniente acerca de su alcance o importancia.

4. Contra las decisiones del Tribunal en materia de pruebas no se admitirá recurso alguno en vía administrativa.

Artículo cuarenta y uno.-*Vista o escrito de conclusiones*

1. El Tribunal acordará la celebración de vista cuando lo estime necesario. En otro caso, concederá a los interesados un plazo de quince días para formular conclusiones.

2. La celebración de la vista será reservada y contradictoria, y en ella intervendrán los interesados, sus representantes y el Servicio de Defensa de la Competencia. El Tribunal podrá también requerir la presencia en la vista de aquellas personas que considere necesarias.

Artículo cuarenta y dos.-*Diligencias para mejor proveer*

1. Después de la vista o transcurrido el plazo de formulación de conclusiones, y antes de dictar resolución, el Tribunal podrá acordar, para mejor proveer, la práctica de cualquier diligencia de prueba, incluso la de declaración de los interesados y la de reconocimiento, y recabar nuevos informes del Servicio o de cualquier otro Organismo, público o privado, y de autoridades o particulares sobre las cuestiones que el propio Tribunal determine.

2. La providencia que las acuerde establecerá el plazo en que deban practicarse, siempre que fuera posible fijarlo, y la intervención que los interesados hayan de tener.

3. Todas las pruebas acordadas como diligencia para mejor proveer se practicarán ante el Tribunal o ante el Vocal designado a tal fin.

Artículo cuarenta y tres.-*Audiencia del Instructor y resolución del expediente*

1. El Tribunal, cuando lo estime conveniente, podrá convocar al Instructor para que le ilustre sobre aspectos determinados del expediente.

Se oirá en todo caso al Instructor cuando el Tribunal, al dictar resolución, estime que la cuestión sometida a su conocimiento pudiera no haber sido apreciada debidamente por el Servicio, al ser susceptible de otra calificación. La nueva calificación se someterá a los interesados para que en el plazo de quince días formulen las alegaciones que estimen oportunas, con suspensión del plazo para resolver.

2. El Tribunal, conclusas las actuaciones, dictará resolución en el plazo máximo de veinte días.

3. Las resoluciones del Tribunal ponen fin a la vía administrativa.

Artículo cuarenta y cuatro.-*Concurrencia con procedimiento ante los Organos comunitarios*

1. El Tribunal podrá aplazar la resolución, a petición de parte, si se acreditase documentalmente que se está siguiendo un procedimiento por los mismos hechos ante los Organos comunitarios. La suspensión se alzará, cuando se hubiese dictado por aquéllos resolución firme. La parte que hubiese alegado la excepción deberá comunicar al Tribunal la decisión adoptada, en el plazo de un mes a partir del día en que hubiese tenido conocimiento de aquélla.

2. Si se hubiera impuesto sanción por los Organos comunitarios, el Tribunal deberá tenerla en cuenta a efectos de graduar la que corresponda según la presente Ley, pudiendo compensarla, sin perjuicio de declarar la infracción.

SECCIÓN TERCERA: DE LAS MEDIDAS CAUTELARES

Artículo cuarenta y cinco.-*Clases y procedimiento para acordarlas*

1. El Servicio, una vez iniciado el expediente, podrá en cualquier momento, de oficio o a instancia de los interesados, proponer al Tribunal de Defensa de la Competencia las medidas cautelares necesarias tendentes a asegurar la eficacia de la resolución que en su momento se dicte y, en especial, las siguientes:

a) Ordenes de cesación o de imposición de condiciones determinadas para evitar el daño que pudieran causar las conductas a que el expediente se refiere.

b) Fianza de cualquier clase, excepto la personal, declarada bastante por el Tribunal para responder de la indemnización de los daños y perjuicios que se pudieran causar.

En el caso de que sean los interesados quienes propongan la adopción de medidas cautelares, el Tribunal podrá exigir la prestación de fianza a los mismos.

2. No se podrán dictar medidas cautelares que puedan originar perjuicios irreparables a los interesados o que impliquen violación de derechos fundamentales.

3. El Tribunal oirá a los interesados en el plazo de cinco días y resolverá en el de tres, sobre la procedencia de las medidas.

4. El Tribunal, por sí o a propuesta del Servicio, para asegurar el cumplimiento de las medidas cautelares, podrá imponer multas coercitivas con las garantías y en la cuantía previstas en el artículo 11.

5. El Servicio podrá proponer al Tribunal, de oficio o a instancia de parte, en cualquier momento del expediente, la suspensión, modificación o revocación de las medidas cautelares en virtud de circunstancias sobrevenidas o que no pudieran ser conocidas al tiempo de su adopción.
6. La adopción de medidas cautelares en ningún caso podrá exceder de seis meses y cesarán, en todo caso, cuando se ejecute la resolución del Tribunal.

Sección Cuarta: De las resoluciones del Tribunal

Artículo cuarenta y seis.-*Contenido, aclaración y publicidad*

1. Las resoluciones del Tribunal podrán declarar:

a) La existencia de prácticas o acuerdos prohibidos.
b) La existencia de un abuso de posición dominante.
c) No resultar acreditada la existencia de prácticas prohibidas.
d) La autorización de acuerdos o prácticas exceptuables.

2. Las resoluciones del Tribunal podrán contener:

a) La orden de cesación de las prácticas prohibidas en un plazo determinado.
b) La imposición de condiciones u obligaciones determinadas.
c) La orden de remoción de los efectos de las prácticas prohibidas contrarias al interés público.
d) La imposición de multas.
e) La calificación de práctica autorizada.
f) Y cualesquiera otras medidas cuya adopción le autoriza la presente Ley.

3. La resolución que deniegue una solicitud de autorización intimará, en su caso, a los solicitantes y a los demás autores de las prácticas prohibidas que hayan sido parte en el expediente, para que desistan de las mismas, previniéndoles de que si con posterioridad a la notificación de la resolución desobedecieran la intimación, incurrirían en las sanciones previstas en el artículo 10.
4. El Tribunal podrá, de oficio o a instancia de parte, aclarar conceptos oscuros o suplir cualquier omisión que contengan sus resoluciones.
Las aclaraciones o adiciones podrán hacerse, dentro de los cinco días hábiles siguientes a la notificación de la resolución o, en su caso, a la petición de aclaración o adición, que deberá presentarse dentro del plazo improrrogable de tres días siguientes al de la noficación.
Los errores materiales y los aritméticos podrán ser rectificados en cualquier momento.
5. Las resoluciones sancionadoras del Tribunal, una vez notificadas a los interesados, se publicarán en el «Boletín Oficial del Estado» y, en la forma que aquél estime adecuada, en uno o varios diarios de ámbito nacional y de las provincias donde tengan el domicilio o realicen las prácticas las personas o empresas sancionadas. El coste de la inserción de las resoluciones correrá a cargo de la persona o empresa sancionada.
El Tribunal podrá asimismo acordar la publicación de sus resoluciones no sancionadoras, en la forma prevista en el párrafo anterior.

6. La desobediencia a las intimaciones del Tribunal será castigada conforme a lo establecido en el Código Penal.

Sección Quinta: De los recursos

Artículo cuarenta y siete.-*Recurso contra los actos de archivo y de trámite dictados por el Servicio*

Los actos de archivo y de trámite del Servicio que determinen la imposibilidad de continuar un procedimiento o produzcan indefensión, serán recurribles ante el Tribunal en el plazo de diez días.

Artículo cuarenta y ocho.-*Trámites y resolución*

1. El recurso se presentará ante el Tribunal, el cual ordenará al Servicio que le remita el expediente con su informe en el plazo de tres días.
2. En el caso de que el Tribunal aprecie que el recurso ha sido interpuesto fuera de plazo, lo rechazará sin más trámite.
3. Recibido el expediente lo pondrá de manifiesto a los interesados para que en el plazo de quince días aleguen y presenten los documentos y justificaciones que estimen pertinentes.
4. Cumplido el trámite anterior, el Tribunal resolverá en el plazo de diez días.

Artículo cuarenta y nueve.-*Recursos contra las resoluciones del Tribunal*

Contra la adopción de medidas cautelares y las resoluciones definitivas del Tribunal de Defensa de la Competencia no cabe ningún recurso en vía administrativa y sólo podrá interponerse recurso contencioso-administrativo.

CAPITULO II

Disposiciones comunes

Artículo cincuenta.-*Supletoriedad de la Ley de Procedimiento Administrativo*

En lo no previsto expresamente en esta Ley o en las disposiciones reglamentarias que se dicten para su ejecución, el Tribunal y el Servicio de Defensa de la Competencia ajustarán su actuación a los preceptos de la Ley de Procedimiento Administrativo y a las normas generales que la desarrollen, que en todo caso tendrán carácter supletorio.

Artículo cincuenta y uno.-*Colaboración de las Administraciones Públicas*

1. Todas las Administraciones Públicas están obligadas a suministrar información o emitir los informes que se les soliciten.
2. El Tribunal de Defensa de la Competencia y el Servicio de Defensa de la Competencia, en cualquier fase del procedimiento, podrán recabar la colaboración de las Comunidades Autónomas. A tal efecto se les dará traslado de las actuaciones integrantes del expediente que sean relevantes para la adecuada prestación de la colaboración recabada.

3. Las Comunidades Autónomas, por su parte, podrán aportar las informaciones y observaciones que consideren oportunas, las cuales se unirán al expediente.

Artículo cincuenta y dos.–*Deber de secreto*

1. Todos los que tomen parte en la tramitación de expedientes previstos en esta Ley o que conozcan tales expedientes por razón de profesión o cargo están obligados a guardar secreto sobre los hechos de que hayan tenido conocimiento a través de ellos.

2. Sin perjuicio de las responsabilidades penales y civiles que pudieran corresponder a los infractores del deber de sigilo, la violación de éste se considerará siempre falta disciplinaria muy grave.

Artículo cincuenta y tres.–*Tratamiento de información confidencial*

El Servicio y el Tribunal de Defensa de la Competencia en cualquier momento del expediente podrán ordenar, de oficio o a instancia del interesado, que se mantengan secretos los datos o documentos que consideren confidenciales, formando con ellos pieza separada.

Artículo cincuenta y cuatro.–*Recaudación en vía ejecutiva*

La recaudación en vía ejecutiva de las multas se efectuará conforme a lo previsto en el Reglamento General de Recaudación.

Artículo cincuenta y cinco.–*Prejudicialidad del proceso penal*

La instrucción de proceso penal ante los Tribunales de Justicia suspenderá la resolución del expediente administrativo que hubiera sido incoado por los mismos hechos.

DISPOSICIONES TRANSITORIAS

Primera.–1. Los acuerdos, decisiones, recomendaciones y prácticas comprendidas en el artículo 1 de esta Ley y existentes a la entrada en vigor de la misma, respecto de los cuales los interesados pretendan obtener la autorización a que se refiere el artículo 4, deberán ser comunicados al Servicio de Defensa de la Competencia, a los efectos establecidos en el artículo 38, en el plazo de seis meses a contar de la publicación de la presente Ley en el «Boletín Oficial del Estado».

2. Quedan exceptuados de la obligación establecida en el número anterior aquellos acuerdos y decisiones autorizados por el Tribunal de Defensa de la Competencia conforme a lo dispuesto en el artículo 5 de la Ley 110/1963, de 20 de julio.

Segunda.–Las incripciones practicadas en el Registro de Prácticas Restrictivas de la Competencia creado por la Ley 110/1963 pasarán a formar parte del Registro a que se refiere el artículo 35.

Tercera.–Los expedientes ya iniciados antes de la vigencia de esta Ley se tramitarán y resolverán con arreglo a las disposiciones hasta ahora en vigor.

Cuarta.–La primera renovación de los Vocales del Tribunal de Defensa de la Competencia se producirá por sorteo a la entrada en vigor de esta Ley.

Quinta.–Hasta que se apruebe la disposición legal oportuna, las resoluciones del Tribunal de Defensa de la Competencia serán impugnables directamente ante la Sala de lo Contencioso-Administrativo de la Audiencia Nacional.

DISPOSICION DEROGATORIA

Quedan derogados la Ley 110/1963, de 20 de julio, de Represión de Prácticas Restrictivas de la Competencia y, en lo que se opongan a la presente Ley, los Decretos 538/1965, de 4 de marzo, por el que se aprueba el Reglamento del Tribunal de Defensa de la Competencia; 422/1970, de 5 de febrero, por el que se aprueba el Reglamento orgánico y funcional y de procedimiento del Servicio de Defensa de la Competencia; 3564/1972, de 23 de diciembre, por el que se modifican y refunden determinados artículos del Reglamento del Servicio de Defensa de la Competencia; la Orden de 28 de septiembre de 1973, por la que se desarrolla el artículo 9 del Reglamento del Tribunal de Defensa de la Competencia; el artículo 4 del Real Decreto-ley 18/1976, de 8 de octubre, sobre medidas económicas, y los Reales Decretos 2574/1982, de 24 de septiembre, por el que se modifican determinados artículos del Reglamento del Tribunal de Defensa de la Competencia, y 1936/1985, de 9 de octubre, por el que se actualiza el Estatuto de los Vocales del Tribunal de Defensa de la Competencia.

DISPOSICION FINAL

Se autoriza al Gobierno para dictar las disposiciones necesarias para el desarrollo y ejecución de la presente Ley.

Por tanto,
Mando a todos los españoles, particulares y autoridades, que guarden y hagan guardar esta Ley.

Palacio de la Zarzuela, a 17 de julio de 1989.–JUAN CARLOS R.–El Presidente del Gobierno, *Felipe González Márquez*.

Annex III

SPAIÑ

ACT 16/1989 OF 17TH JULY FOR THE PROTECTION OF COMPETITION

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MINISTERIO DE ECONOMIA Y HACIENDA

ACT FOR THE PROTECTION OF COMPETITION OF 17 JULY, 16/1989

JUAN CARLOS I

KING OF SPAIN

To all those who see and understand the present.

Know: that the Spanish Parliament has approved and I come to give my assent to the following act:

REASONS FOR THE ACT

Competition, as the guiding principle of all market economies, is an inseparable part of the model of economic organization of our society and represents, in the context of individual liberty, the first and most important form in which the exercise of free enterprise is manifest itself. Protection of competition, therefore, according to the requirements of the economy in general and, where appropriate, of planning must be regarded as a mandate for the public authorities which links directly with Article 38 of the Constitution.

This act responds to that specific objective: to guarantee the existence of adequate competition and protect it against all attacks contrary to the public interest, being also compatible with the rest of the acts governing the market and in keeping with other legal or economic requirements of a public and private order.

The act rests on the solid pillars of experience. First, it results from the Community rules issued under the policy on competition which have played an important part in the creation and working of the common market. Secondly, it is drafted to overcome the defects which frustrated the full application of the Act 110/1963 of 20th July on repression of Restructure Practices of Competition is now repealed.

Under the first Title "Free competition", the Chapter I "Agreements and restrictive or abusive practices" regulates a system of flexible control for those agreements limiting competition in the domestic market and it prohibits abusive exercise of economic power and unilateral conduct using unfair means which is capable of appreciably distorting competition. In the Chapter II "Economic concentrations" a scheme of control is established for those which, because of their importance and effects, could alter the structure of the domestic market against the public interest. And in the Chapter III, "Public aids" a system is introduced which allows these to be analyzed using criteria based on competition and, when necessary, anticipate their undesirable effects from the point of view of the general interest.

The implementation of the act, in so far as it deals with guaranteeing the constitutional economic order in the market economy for the protection of the public interest, is entrusted to public bodies: The Court for the Protection of Competition, with decision powers and, where applicable, proposal powers; the Service for the Protection of Competition, which is charged with inchoate proceedings. The latter have a special character because of the essential complexity of the subject and the need to provide for the independence of the system from the Government in addition to the judicial control of its acts.

The procedure applicable, set out in the Title III, uses the criteria of economy, speed and effectiveness, as well as the guarantee of the defence of the parties involved, and includes those special cases brought because of their nature, envisaging in certain cases the participation of Autonomical Communities and the Council of Consumers' Unions.

Finally, a scheme of sanctions is established to guarantee compliance with the act, in both its formal and substantive aspects.

TITLE I

Free competition

CHAPTER I

Agreements and restrictive or abusive practices

SECTION 1: PROHIBITED AND AUTHORISED CONDUCT

Article one.- Prohibited conduct

1. All agreements, collective decisions or recommendations, or concerted or consciously parallel practices, which have as their objet or effect or could have the effect of prevention, restriction or distortion of competition in all or in part of the domestic market shall be prohibited and, in particular, those which comprise:

a) Directly or indirectly fixing prices or other trading or service conditions.

b) Limiting or controlling production, distribution, technical development or investment.

c) Sharing the market or the sources of supply.

d) Applying, in trading or service relations, dissimilar conditions to equivalent transactions which place some competitors in a disadvantageous situation with respect to others.

e) Making the conclusion of contracts subjet to acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with the object of such contracts.

2. Any agreements, decisions and recommendations prohibited under the provisions of paragraph 1 and not covered by the exemptions provided for in this act shall be automatically void.

Article two.- Conduct authorized by the act

1. The prohibitions contained in Article 1 shall not apply to those agreements, decisions, recommendations and practices which result from the application of a act or of the regulations issued in application of an act.

2. The Court for the Protection of Competition may propose the Government, through the Ministry of Economy and Finance, to eliminate or modify situations which restrict the competition established under legal rules.

Article three.- Cases of authorization

1. The agreements, decisions, recommendations and practices referred to in Article 1 or categories of them which contribute to improving production or marketing of goods and services or to promoting technical or economic progress may be authorized provided that they:

a) Allow consumers or users a fair share of the resulting benefits.

b) Do not impose on the enterprises concerned restrictions that are not indispensable to the attainment of those objectives, and

c) Do not allow enterprises the possibility of eliminating competition in respect of a substantial part of the products and services concerned.

2. In addition, the agreements, decisions, recommendations and practices or categories of them referred to in Article 1 may be authorized, provided that and in so far as they are justified by the general economic situation and the public interest, and which:

a) Are intended to protect or encourage exports, in so far as they are compatible with obligations arising under international conventions ratified by Spain, or

b) Are intended to adapt supply to demand when the market shows a sustained trend towards the reduction of the latter, or when excess productive capacity is clearly detrimental, or

c) Produce a sufficiently appreciable raising of the social and economic level of depressed areas or industries, or

d) Given their slight importance are not capable of significantly affecting competition.

Article four.- Individual authorizations by the Court

1. The Court for the Protection of Competition may authorize the agreements, decisions, recommendations and practices referred to in Article 1 in the cases and with the requirements provided for in Article 3.

2. The authorization of the Court will set the date on which it will come into force which cannot be prior to that of the application for the authorization. In addition, it will determine the period of time in which modifications, conditions or obligations may be made, subject to hearing of the parties involved and of the Service for the Protection of Competition in a common period of ten days.

3. The authorization may be renewed on application by the parties involved if, in the opinion of the Court, the circumstances which caused it persist.

The authorization may be modified or revoked if a fundamental change occurs in the circumstances taken into account for its granting.

The authorization may be also revoked if its beneficiaries do not fulfil the conditions or obligations laid down by the Court or it is proved that the grant is based on relevant data provided in an incomplete or inexact form by the parties.

In all cases mentioned, a hearing of the parties involved and of the Service will be mandatory.

4. In the case that three months after the application for authorization of a agreements, decisions, recommendations and practices, the Court has not notified any decision in the matter, the enterprises participating may proceed to apply it provisionally. If the agreements are not authorised by the Court, this will stablish in its resolution the date from which the application of the agreements will cease. No retroactive effects can be argued with respect to the notified agreement for the period of provisional application.

Article five.- Group exemptions.

1. By means of Regulations of exemption, in whose preparation the Court for the Protection of the Competition shall give advice, the Government may authorize groups of agreements, decisions, recommendations and concerted or consciously parallel practices stipulated in Article 3.1, when:

a) Only two enterprises take part and impose restrictions on the distribution and/or supply of certain products for sale or resale, or in relation to the acquisition or use of rights of industrial or intellectual property, or of secret industrial or commercial information, or

b) They have as their object the development and uniform implementation of standards or types, or specialization in the manufacture of certain products, or research and development in common, or

c) They have as their object or effect increasing the rationality and competitiveness of enterprises, particularly those of small and medium size.

2. In the same way, by means of Regulations of exemption, in whose preparation the Court for the Protection of the Competition shall give advice, the Government may authorize the groups of agreements, decisions, recommendations and practices referred to in Article 3.2.

Article six.- Abuse of a dominant position

1. The abusive exploitation by one or more enterprises of a dominant position in all or part of the domestic market shall be prohibited.

2. Such abuse may, in particular, consist, of:

a) Directly or indirectly imposing prices or other unfair trading or service conditions.

b) Limiting production, distribution or technical development to the unjustifiably perjudice of enterprises or consumers.

c) Unjustifiably refusing to meet the demand for purchase of products or provision of services.

d) Applying, in trading or service relations, dissimilar conditions to equivalent transactions, which place some competitors in a disadvantageous situation compared with others.

e) Making the conclusion of contracts subjet to acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with the object of such contracts.

3. The prohibition will also be applied to those cases in which the dominant position in the market of one or more enterprises has been established by an act.

Article seven.- Distortion of free competition by unfair acts

The Court for the Protection of Competition shall act according to the provisions of this act regulating prohibited conduct, in relation to the acts of unfair competition which because they appreciably distort free competition, in all or part of the domestic market, affect the public interest.

Article eight.- Joint liability of the controlling enterprises exercising a dominant influence.

For the purpose of the application of this act, it is to be understood that the conducts of an enterprise dealt with in this act are also imputable to the enterprise controlling its economic conduct.

SECTION 2: SANCTIONS

Article nine.- Court Injunctions

Those who carry out the acts described in Articles 1, 6 and 7 may be enjoined by the Court for the Protection of Competition to desist from them and, where applicable, be obliged to remove their effects.

Article ten.- Fines

1. The Court may impose on the economic agents, enterprises, associations, unions or groups formed by these which, deliberately or through negligence, infringe the provisions contained in Articles 1, 6 and 7 or cease to comply with a condition or obligation stipulated in Article 4.2, fines of up to 150,000,000 pesetas, amount which may be increased up to 10 per 100 of the volume of sales for the financial year immediately prior to the decision of the Court.

2. The amount of the fine will be fixed in relation to the importance of the infringement, for which the following will be taken into account:

a) The nature and scope of the restraint on competition.

b) The size of the market affected.

c) The market share of the enterprise.

d) The effect of the restraint of competition on effective and potential competitors, on other parties in the economic process and on consumers and users.

e) The duration of the restraint of competition.

f) The repetition of the prohibited practices.

3. In addition to the sanction imposed, when it concerns an legal person, a fine of up to 5,000,000 pesetas may be imposed on its legal representatives or on the persons constituting the administrative bodies who have participated in the agreement or decision.

Those persons who, forming part of the administrative bodies, did not attend the meetings or voted against or abstained in the voting are excluded.

4. If an application for the authorization specified in Article 4 is made, fines will not be imposed for infringement of Article 1 for the conducts referred to in the application and carried out during the period between the making of the

application and the decision relating to it. This provision shall not apply when the Court, after a provisional examination of the application, adopts a decision opposing to the execution of the acts referred to in the application.

Article eleven.- Periodic penalty fines

The Court, independently of the above-mentioned fines , may impose on the economic agents, enterprises, associations, unions or groups of these, penalty payments of 10,000 to 150,000 pesetas, repeated over periods of time sufficient to comply with that ordered for the purpose of obliging them to desist from the prohibited action, in accordance with the provisions of this act, or to remove the effects of the infringement.

After compliance with the decision of the Court, the amount of the payment arising from the initial decision may be reduced, according to the attendant circumstances.

Article twelve.- Prescription of the infringements and sanctions

1. The following shall be subjet to prescription:

a) After five years, the infringements specified in this legal text The period will commence to run from the day in which the infringement was committed.

b) After three years, the action requiring compliance with the sanctions.

2. The prescription is interrupted by any act of the Court or the Service for the Protection of the Competition, with formal cognizance of the parties involved, which tends towards the inquiry, or prosecution of the infringement.

Article thirteen.- Other liabilities and compensation for damage

1. The sanctions contained in this act are to be interpreted without prejudice to other liabilities which arise in each case.

2. Legal action for compensation for damages based on the unlawful nature of the acts prohibited by this act, may be initiated by those who suffer damage, once the decision becomes final in the administrative and, where applicable, jurisdictional proceedings. Compensation for damages shall be subject to the substantive and formal requirements established in civil Laws.

CHAPTER II

Economic concentrations

Article fourteen.- Scope of application

All projects or operations of concentrations of enterprises or taking of control of one or more enterprises by another person, enterprise or group of enterprises, provided that they affects or could affect the Spanish market and especially by the creation or strengthening of a dominant position, may be submitted by the Ministry of Economy and Finance to the Court for the Protection of Competition for its opinion:

a) When a share equal or greater than 25 per 100 of the domestic market or a substantial part of it, is acquired or increased, relating to a particular product or service, or

b) When the aggregate turnover in Spain of all participants exceeds in the last accounting period the amount of twenty thousand million pesetas.

Article fifteen.- Voluntary notification and tacit authorization

1. All projects or operations of concentrations of enterprises or taking of control shall be notified voluntarily to the Service for the Protection of Competition by one or more of the participating enterprises, prior to or within three months of its taking place.

The prior notification does not require the suspension of the execution of the operation before its express or tacit authorization, although in all cases that operation will remain subject to the provisions of Article 17.

2. The form and content of the notification will be determined by regulation, so that the confidentiality of the fact of its presentation and, where applicable, of that part of it that must be reserved is guaranteed.

The notification will record the information necessary to appraise the nature and effects of the operation and, in particular, the information identifying the participating persons, the balance sheets of the enterprise and/or groups of enterprises and their respective market shares, the form and development of the operation and their financial and legal situation.

3. Notification of the operations of acquisition of listed shares when, according to the provisions of Article 60 of the Law 24/1988 of the Stock Market, it is mandatory to carry out a public takeover bid will be the object of specific proceedings to be determined by regulation.

4. The Minister of Economy and Finance will send to the Court the files related to these projects or operations of concentration or taking of control notified voluntarily by the interested parties which he considers could hinder the maintenance of an effective competition in the market, so that the Court, after a hearing, where applicable, of the interested parties delivers its judgement within three months.

It is to be understood that the Administration does not oppose the operation if, a month having passed since voluntary notification to the Service, the Court has not had submission of it, or if it has not delivered the judgement stipulated in the foregoing paragraph within the period indicated therein.

The Service will notify the interested parties of the date on which the case is sent to the Court for the Protection of Competition.

Only operations notified voluntarily to the Service for Protection of Competition will benefit from the tacit authorizations or periods indicated in this Article.

Article sixteen.- Report of the Court

The appraisal of whether a project or operation of concentration or taking of control could hinder the maintenance of an effective competition in the market will be based on an analysis of their restrictive effects, predictable or proved, mainly taking into account the following circumstances:

a) Delimitation of the relevant market.

b) Its structure.

c) The possibilities of choice for suppliers, distributors and consumers or users.

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d) Economic and financial power of the enterprises.

e) Development of supply and demand.

f) Foreign competition.

The Court may consider also the contribution that the merging or taking of control could make to improving systems of production and marketing, promotion of technical and economic progress, international competitiveness of domestic industry or to the interests of consumers and users and if this contribution is sufficient to compensate for the restrictive effects on competition.

Article seventeen.- Government jurisdiction

The Court for the Protection of Competition will send its report to the Minister of Economy and Finance for submission to the Government, which within three months may decide:

a) Not to oppose to the operation of concentration.

b) Make its approval depend on the fulfilment of conditions which bring sufficient contributions to economic and social progress to compensate for the restrictive effects on competition.

c) Declare it inadmissible being authorized to:

c.1) Order that it is not proceeded with where it has not been started.

c.2) Order the appropriate measures for the establishment of effective competition, including the divestiture or the giving up of control.

Article eighteen.- Sanctions

If the provisions contained in Article 17 are not complied with, the Government, without prejudice to the application of the enforcement measures laid down in the act, may impose on each of the enterprises affected a fine of up to 10 per 100 of their respective turnover in Spain.

CHAPTER III

Public aids

Article nineteen.- Jurisdiction of the Court

1. The Court for the Protection of Competition, at the request of the Minister of Economy and Finance, may examine the aids granted to the enterprises from public funds, in relation to its effect on the conditions of competition.

After considering the opinion of the Court, the Minister may propose to the Government the elimination or modification of aids, as well as, where applicable, other economic measures leading to the maintenance or reestablishment of competition.

2. For the purposes stipulated in the foregoing paragraph the Court may address communications or requests to the enterprises, as well as obtain from the Government information concerning the furnishing of public funds or the financial benefits granted or obtained.

TITLE II

Bodies for the protection of competition

CHAPTER I

The Court for the Protection of Competition

SECTION 1: ORGANIZATION OF THE COURT

Article twenty.- Attachment of the Court; seat and territorial extent of its jurisdiction.

The Court for the Protection of Competition, attached for administrative purposes to the Ministry competent in the subject, performs its duties with full independence and subject to the act.

Its seat is in the capital of the State, its jurisdiction extends to all Spanish territory and it enjoys the treatment which according to tradition corresponds to it.

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Article twenty-one.- Composition

1. The Court for the Protection of Competition shall consist of a President and eight members, appointed by the Government on a proposal from the Minister of Economy and Finance selected among lawyers, economists and other professionals of prestige with more than fifteen years of professional experience.

2. The appointment of the President and the members will be for six years renewable. The members will be renewed by halves every three years.

3. The members of the Court will have the consideration of high officials. When the appointment falls on persons in the active service of the Public Administration, these will be transferred to the special service condition or equivalent.

4. The Court will elect, from among its members, a Vice-president, who will substitute the President in case of vacancy, absence or illness.

5. The Court will be assisted by a Secretary.

Article twenty-two.- Incompatibilities of its members

1. Members of the Court for the Protection of Competition will perform their duties in an exclusive way and will be subject

to the rules on incompatibilities generally established with for high officials of the Public Administration.

2. The occasional exercise of offices or activities in international organizations in representation or by commission of the Spanish Government is excepted of the foregoing provision provided that no remuneration is received except for the expense allowance and regulated compensation which might correspond.

Article twenty-three.- Causes of cessation and suspension in the exercise of office

1. The President, the Vice-president and the members of the Court for the Protection of Competition will cease to exercise their office because of: a) resignation; b) expiration of the term of office; c) unforeseen incompatibility; d) conviction for fraudulent crime; e) permanent disability; f) cessation, determined by serious non-fulfillment of the duties of the office on a proposal from three-quarters of the Court.

2. The President, the Vice-president and the members of the Court for the Protection of Competition may only be suspended in the exercise of their office: a) When a prison judgement or indictment for fraudulent crime is issued against them; b) When it is decided in disciplinary action or in declaration of temporary disability; c) By final verdict of guilty imposing suspension as main or accessory penalty.

SECTION 2: THE FUNCTIONS AND POWERS OF THE COURT

Article twenty-four.- The Working of the Court

The Court is validly constituted with the attendance of the President or Vice-president and five members.

The Court may act through Commissions for the carrying out of proceedings in certain cases.

Decisions will be adopted by absolute majority of votes of those attending. In case of a tie, the chairman officer will have the deciding vote.

Article twenty-five.- Jurisdiction

The Court has jurisdiction to: a) Decide on matters reserved to it under this Act; b) require the Service for the Protection of Competition to iniciate proceedings; c) authorize the agreements, decisions, recommendations and practices referred to in Article 3; d) carry out the functions of amicable mediator or arbitrator attributed to it by law.

Article twenty-six.- Advisory functions and issue of reports

1. The Court also has jurisdiction to: a) advise on the draft Bills which may affect competition; b) issue reports to any State authority or body, and c) study and submit to the Government the appropriate proposals for the amendment of the Act, according to the dictates of experience in the application of national and community law.

2. The Court may be consulted by the Parliamentary Committees on proposed draft bills and on any other question related to free competition.

The Court may also issue reports on subjects concerning free competition when required by the Government or by any of the Ministerial Departments, Autonomous Communities, Local Administrations, business organizations, unions, or consumers and users associations.

3. The Court will promote and make studies and research in the field of competition.

Article twenty-seven.- Other functions

The Court is charged with: a) developing its internal regulation, which will lay down its administrative working and the organization of its services; b) maintaining relations with other similar bodies; c) deciding on objections, incompatibility matters and disciplinary actions and evaluate the incapacity and the non-fulfilment of their functions by the President, Vice-president and members; d) appointing and discharging the Secretary; e) proposing or, where appropriate, advising on the project of permanent staff for the service of the Court; f) preparing the preliminary draft of the general budget of the Court, and g) producing an annual report.

Article twenty-eight.- Functions of the President

1. Functions of the President of the Court for the Protection of Competition are to: a) represent the Court in relations with other public bodies; b) summon the full court on his own initiative or on the application of at least three of the members and preside over it; c) maintain the good order and government of the Court; d) report on the vacancies which occur in the Court; e) grant leave of absence and permission to the members and personnel of the Court; f) authorize the expenses, and g) decide on other matters not assigned to the full court.

2. The President may delegate to the Vice-president those powers that the considers appropriate.

Article twenty-nine.- Sanctions for non-compliance with the duty to supply data

1. All natural or legal persons have the duty to cooperate with the Court for the Protection of Competition, and are obliged to supply, at the request of the Court, all class of data and information necessary for the application of this law.

2. The Court for the Protection of Competition may impose fines up to 1,000,000 pesetas on natural and legal persons, who, deliberately or negligently, do not supply data or information or do so incorrectly or inaccurately.

CHAPTER II

The Service for the Protection of Competition

SECTION 1: ATTACHMENT AND FUNCTIONS OF THE SERVICE

Article thirty.- Administrative attachment

The Service for the Protection of Competition is attached to the Ministry competent in the subject.

Article thirty-one.- Functions

Functions of the Service for the Protection of Competition are to: a) carry out proceedings concerning conducts included in this act; b) control the execution of and compliance with the decisions adopted in application of this act; c) keep the Register of the Protection of Competition; d) study and carry out research on economic sectors analyzing the situation and degree of competition of each one, as well as of the possible existence of restrictive practices on competition. As a consequence of the studies and research carried out, it may propose to take measures leading to the removal of obstacles on which is based the restriction; e) provide information, advise and recommendations in the area of agreements and restrictive practices, concentration and association of enterprises, degree of competition in the internal and external market in relation to the domestic one, and on other matters relating to the protection of competition; f) those of cooperation, in matters of competition, with foreign organizations and international institutions.

SECTION 2: COOPERATION WITH THE GOVERNMENT; POWERS OF THE SERVICE FOR THE PROTECTION OF COMPETITION

Article thirty-one.- Duties of cooperation and information

1. All natural and legal persons have the duty to cooperate with the Service for the Protection of Competition, and are

obliged to supply, at the request of the Court, all class of data and information necessary for the application of this act.

2. Non-compliance with this obligation specified in the foregoing number will be sanctioned by the Director of the Service with a fine of 50,000 to 1,000,000 pesetas.

Article thirty-three.- Investigation and inspection functions

1. The officials duly authorised by the Director of the Service for the Protection of Competition may carry out the necessary investigations for the due application of this act.

2. The officials, during the inspections, may examine, obtain copies or make extracts of the books, documents, including those of an accounting nature and, if appropriate, retain them for a maximum period of ten days.

3. In their inspections they may be accompanied by experts in the subjects dealt with.

4. Obstruction of the work of inspection may be punished by the Director of the Service with a day-to-day fine of up to 150,000 pesetas per day.

Article thirty-four.- Investigation of premises

1. Access to the premises may be obtained with the consent of their occupants or by judicial warrant.

2. If the consent of the occupants is obtained, the authorised official will show his credentials and deliver a copy evidencing his appointment by the Director of the Service for the Protection of Competition, the persons investigated, the information, documents and operations which are to be the object of the inspection, the date on which it must be carried out and the scope of the investigation.

3. The Director of the Service for the Protection of Competition will apply for the judicial warrant, and the application document will show the data specified in the foregoing number.

The relevant Judge or Court will decide the question within a maximum period of forty-eight hours.

4. All the entries into premises and inspection will drawn in a minutes by the authorized official and by one of its occupants, to which will be attached, if applicable, the list of documents temporarily retained.

5. The official will issue a copy of the minutes of the person who authorised the entry to the premises. If the entry and inspection were made under judicial warrant, the original of the

minutes and the documents retained, if appropriate, will be delivered to the corresponding Judge or Court, which will issue a copy in the name of the official who made the inspection and another in the name of the occupant before whom the investigation was carried out. In addition, where appropriate, the documentation retained will be delivered to the official.

6. The data or information obtained may only be used for the purpose provided for in this act.

SECTION 3: REGISTER OF THE PROTECTION OF COMPETITION

Article thirty-five.- Public character of the Register and acts to be registered.

The Register of the Protection of Competition will be public, and will record the agreements, decisions, recommendations and practices which the Court has authorised and those it has declared totally or partially prohibited. In addition operations of concentration of enterprises or of taking of control referred to in Articles 14 and 15 of this act will be registered.

For this purpose the Court will provide the Service with a copy of its decisions.

TITLE III

Procedure

CHAPTER I

Procedure relating to agreements and prohibited and authorized practices

SECTION 1: PROCEDURE BEFORE THE SERVICE

Article thirty-six.- Opening of Procedure

1. The procedure is initiated by the Service on its own initiative or at the request of any interested party.

Any member of the public may report prohibited conducts covered by this act; any person, whether having an interest or not, may lodge a complaint before the service which, if it contains reasonable signs of being founded, shall initiate proceedings.

2. The Service may agree to establish a confidential report before deciding to open proceedings or if appropriate, file the records of the case.

3. The decision by which the proceedigs are inchoated will appoint the official in charge of them and, where appropriate, a Secretary, and the interested parties will be notified of this.

4. After the proceedings have been inchoated a brief note may be published of the relevant facts on which it is based, so that any person may supply information within no more than 15 days.

The note referred will be published in the "Official State Gazette" and, where appropriate, in a newspaper with national circulation or in the largest of the province in which the practices objected to in the proceedings are taking place.

5. The Service, on its own initiative or at the request of any interested party, may decide to join proceedings when a direct connection exists between them.

6. The Service will inform the Court of complaints received, of filing of records and of decisions inchoating cases.

Article thirty-seven.- Carrying out Legal proccedings

1. The Service will carry out the legal actions necessary for the clarification of the facts and determination of liability.

The facts which may constitute an infringement will be set forth in a statement of objections which will be notified to the presumed offenders so that, within fifteen days, they can answer it and, if they wish, propose the practice of any evidence that they consider relevant, and after the probationary period has been closed, make an valuation of it within ten days.

The evidence offered by the presumed offenders will be included in the report made by the Service, stating its acceptance or rejection, as the case may be.

2. The interested parties may, at any time of the proceedings, make allegations, which will be taken into account by the Service when making the report referred to in the following paragraph.

3. The Service, once the proccedings are completed, will send them to the Court, enclosing a report describing the conducts observed, its foregoing circumstances, its effects and its assessment of the facts.

4. The Service may close proceedings, after a hearing of the interested parties. The closing decision may be challenged in accordance with Articles 48 and 49.

Article thirty-eight.- Carrying out authorization proceedings

1. The proceedings to authorize the agreements, decisions, recommendations and prohibited practices referred to in Article 3 will be initiated ot the request of any interested party.

2. After initiating proceedings for the establishment of the existence of agreements, decisions, recommendations and practices prohibited in Section 1, the interested parties may request that they are declared authorized in accordance with Article 3.

3. In the authorization proceedings the Service will also publish the brief note mentioned in Article 36 (4), will make the necessary inquiries, hear the interested parties and send the case to the Court, within thirty days, with its assessment of the facts.

4. In the events referred to in Article 3 (1) of this Act the report of the Council of Consumers' Associations will be compulsory in accordance with the provisions of Article 22 (5) of the Act 26/1984 of 19th July.

SECTION 2: PROCEDURE BEFORE THE COURT FOR THE PROTECTION OF COMPETITION

Article thirty-nine.- Accepting the case as being complete

The Court, having received the case, will decide on its acceptation within five days, taking into account if the necessary information has been submitted. Otherwise, the Court will request the Service to take the appropriate measures, which may be complemented with those which the Service considers relevant.

Article forty.- Probationary phase of the case

1. If the Court accepts the case the interested parties must be informed within 15 days, during which time they may apply for the holding of a hearing and propose the actions to obtain the evidence that they consider necessary, on whose relevancy the Court will decide within five days.

2. The Court may take, as many actions, to obtain evidence as it deems necessary, allowing the interested parties to participate.

3. The result of such actions will be made available to the interested parties, who may, within ten days, argue whatever they consider relevant concerning its extent or importance.

4. No administrative appeal against the decisions of the Court with regard to the actions to obtain evidence will be admitted.

Article forty-one.- Hearing or written conclusions

1. The Court will decide on the holding of a hearing when it considers it necessary. Otherwise, it will grant the interested parties a period of 15 days to make conclusions.

2. The holding of the hearing will be reserved and in the presence of the interested parties. The interested parties, their representatives and the Service for the Protection of Competition will participate in the hearing. The Court may also require the presence in the hearing of those persons it considers necessary.

Article forty-two.- Proceedings to furnish additional information

1. After the hearing or the period for making conclusions, and before pronouncing its decision, the Court may decide to allow the taking of actions to obtain evidence, including the declaration of the interested parties and the attestation, and obtain new reports from the Service or any other public or private body and from authorities or individuals on matters determined by the Court.

2. The decision to take actions to obtain evidence will establish the period in which this must done, provided that it is possible to set it, and the participation which the interested parties are to have.

3. All the actions to obatin evidence taken in this phase of the proceedings will be carried out before the Court or the member appointed for such purpose.

Article forty-three.- Hearing of the official in charge of the proceesings and resolution on the case

1. The Court, when it considers it appropriate, may summon the official in charge to elucidate certain aspects of the case.

The said official will always be heard when the Court, on pronouncing its resolution, considers that the question submitted for judgement may not have been duly appraised by the Service, another assessment being possible. The new assessment will be submitted to the interested parties so that within fifteen days they may present the appropriate allegations, with suspension of the period for reaching a resolution.

2. The Court will pronounce its resolution within a maximum delay of twenty days after the conclusion of the proceedings.

3. The resolution of the Court close the administrative phase of proceedings.

Article forty-four.- Concurrent national and Community bodies proceedings

1. The Court may postpone the decision, at the request of a party, if documentary evidence demonstrates that a file for the same facts is pursued before the Community bodies. The suspension of proceedings will be ended, when those bodies have given their final decision. The party which had invoked the exception must inform the Court of the decision adopted within one month from the day on which notice of it was received.

2. If a sanction was imposed by any Community body, the Court must take it into account when graduating the sanction to be imposed under this Act, even compensating it, without prejudice to the declaration of the infringement.

SECTION 3: INTERIM MEASURES

Article forty-five.- Classes of interim measure and proceedings for adopting them

1. Once proceedings have been initiated the Service, may at any moment, on its own initiative or at the request of the interested parties, propose the Court for the Protection of Competition the adoption of the necessary interium measures aimed to ensure the effectiveness of the resolution to be pronounced and, particularly, the following:

a) Orders to desist or to impose conditions to avoid the damage which the conduct referred to in the file might cause.

b) Bail of any class, except personal, declared sufficient by the Court to respond as indemnity for the damages which might be caused.

In case the interested parties are the ones who propose the adoption of interim measures, the Court may require them to provide a bail.

2. Interim measures may not be taken which might cause irreparable damage to the interested parties or which imply violation of fundamental rights.

3. The Court will hear the interested parties within five days and will decide within three days whether the measures are justified.

4. The Court, by its own initiative or on the proposal of the Service, may impose restraining fines with the guarantee and in the amount specified in Article 11 to ensure compliance with the interim measures.

5. The Service may propose to the Court, on its own initiative or at the request of a party, at any time of the proceedings, the suspension, modification or repeal of the interium measures considering new circumstances or which could not have been known at the time the measures were taken.

6. The adoption of interium measures in no case may exceed six months and will cease, in any case, when the resolution of the Court is executed.

SECTION 4: RESOLUTIONS OF THE COURT

Article forty-six.- Content, clarification and publication

1. The resolution of the Court may declare:

a) The existence of prohibited practices or agreements.
b) The existence of an abuse of dominant position.
c) That there is no proof of the existence of prohibited practices.
d) The authorization of agreements or exempted practices.

2. The resolutions of the Court may contain:

a) The order to desist from carrying out the prohibited practices within a certain period.

b) The imposition of conditions or specific obligations.

c) The order to remove the effects of the prohibited practices contrary to the public interest.

d) The imposition of fines.

e) The declaration of authorised practice.

f) And any other measures whose adoption is authorized by this Act.

3. If the resolution of the Court refuses an application for authorization it shall, where appropriate, enjoin the applicants and the other authors of the prohibited practices subject of the file, so that they desist from them, warning them that if subsequent to the notice of the decision they fail to comply the injunction, they will incur the sanctions specified in Article 10.

4. The Court may, on its own initiative or at the request of the parties, clarify obscure points or supply any omission that may exist in its resolutions.

Clarifications or additions may be made, within the five working days following the notice of the resolution or, where appropiate the application for clarification or addition, which must be presented within a non-extendable period of three days following the notice.

Factual and arithmetical errors may be rectified at any time.

5. The punishing resolutions of the Court, after notice to the interested parties, will be published in the "Official State Gazette" and, in the form that the Court considers appropriate, in one or more daily newspapers with national circulation or circulation in the provinces where the punished persons or enterprises carry out the practices or have their residence. The cost of the insertion of resolutions will be for the account of the person or enterprise punished.

The Court may also decide to publish its non-punishing resolutions in the form provided for in foregoing paragraph.

6. Non-compliance with the injunctions of the Court will be punished in accordance with the provisions of the Criminal Code.

SECTION 5: APPEALS

Article forty-seven.- Appeals against the filing and other procedural decisions of the Service.

The filing and other procedural decisions of the Service which determine the impossibility to continue the proceedings or create defencelessness will be subject to challenge before the Court within ten days.

Article forty-eight.- Procedures and decision

1. The appeal will be presented before the Court, which will order the Service to send it the file with its report within three days.

2. The Court will reject the appeal without further procedure where it considers that it was submitted outside the applicable period.

3. After reception of the file it will be made available to the interested parties so that within fifteen days they may present the allegations, documents and justifications they consider relevant.

4. After completion of the foregoing procedure, the Court will issue its decision within ten days.

CHAPTER II

Common provisions

Article fifty.- Supplementary application of the Act of Administrative Proceedings

In whatever is not specifically provided for in this Act or in the regulations issued for its implementation, the Court and the Service for the Protection of Competition will adjust their actions to the provisions of the Act of Administrative Proceedings and the general rules implementing it, which, in any case, will have supplementary nature.

Article fifty-one.- Cooperation of the Public Administration

1. All Public Administrations bodies are obliged to supply the information or issue the reports requested from them.

2. The Court for the Protection of Competition and the Service for the Protection of Competition, in any phase of the proceedings, may request the cooperation of the Autonomical Communities. To this effect the relevant records forming the file will be supplied to them to enable them to cooperate in the way requested.

3. The Autonomical Communities, for their part, may supply the information and observations they consider appropriate and which will be joined to the file.

Article fifty-two.- Duty of secrecy

1. All those taking part in the proceedings of files under this Act or who have knowledge of such files by reason of their occupation or office are bound to secrecy regarding the information obtained.

2. Without prejudice to the criminal and civil liabilities which could correspond to those violating the duty of secrecy, the violation of it will always be considered a serious disciplinary fault.

Article fifty-three.- Treatment of confidential information

The Service and the Court for the Protection of Competition at any time of the proceedings may order, on their own initiative or at the request of any interested party, that the information and documents that they considers confidential are not disclosed forming whit them a separate record.

Article fifty-four.- Collection by executive proceedings

The collection by executive proceedings of the fines will be made in accordance with the provisions of the General Regulation on Collection.

Article fifty-five.- Preliminary nature of criminal proceedings

The bringing of criminal proceedings before any Courts of justice will suspend the resolution in the administrative proceedings that had been inchoated for the same facts.

TRANSITIONAL PROVISIONS

First.- 1. The agreements, decisions, recommendations and practices contained in Article 1 of this act and existing at the coming into force of this act, in respect of which the interested parties aim to obtain the authorization referred to in Article 4, must be notified to the Service for the Protection of Competition, for the purposes laid down in Article 38, within six months of the publication of this Act in the "Official State Gazette".

2. Those agreements and decisions authorized by the Court for the Protection of Competition are exempted from the obligation stipulated in the foregoing number in accordance to the provisions of Article 5 of the Act 110/1963 of 20th July.

Second.- The inscriptions made in the Register of Restrictive Practices of Competition created by the act 110/1963 will become part of the Register referred to in Article 35.

Third.- Those files already initiated before the coming into force of this act will be handled and decided under the provisions in force until now.

Fourth.- The first renewal of the members of the Court for the Protection of Competition will be made by drawing lots on the coming into force of this law.

Fifth.- Until the appropriate legal provision is approved, the resolutions of the Court for the Protection of Competition will be challengeable directly before the Chamber of Administrative Litigation of the National High Court.

REPEATING PROVISION

The following are repealed: Act 110/1963 of 20th July on repression of Restictive Practices of Competition and, in so far as they are not in conformity with the present act; Decrees 538/1965 of 4th March, issuing the Regulations of the Court for the Protection of Competition; Decree 422/1970 of 5th February issuing the organizational, functional and procedural Regulation for the Service for the Protection of Competition; Decree 3564/1972 of 23rd December amending certain articles of the Regulation of the Service for the Protection of Competition; Order of 28th September 1973 developing Article 9 of the Regulation of the Court for the Protection of Competition; Article 4 of the Royal Decree-law 18/1976 of 8th October, on economic measures, and the Royal Decree-laws 2574/1982 of 24th September amending certain articles of the Regulation of the Court for the Protection of Competition, and 1936/1985 of 9th October updating the Statute of the Members of the Court for the Protection of Competition.

FINAL PROVISION

The government is authorised to issue the necessary provisions for the development and execution of this act.

Therefore,

I order all Spaniards, private and official, to obey and to make obey this act.

Zarzuela Palace, 17th July 1989 - King Juan Carlos.
President of the Goverment - Felipe González Márquez.

Annexe III

ESPAGNE

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MINISTERIO DE ECONOMIA Y HACIENDA

LOI 16/1989 DU 17 JUILLET (CHEF DE L'ETAT) DE DEFENSE DE LA CONCURRENCE

(J.O. numéro 170 du 18 juillet 1989)

JUAN CARLOS I
ROI D'ESPAGNE

A tous ceux qui en connaîtraient,
Sachez: que le Parlement a approuvé et que j'ai sanctionné la loi suivante:

EXPOSE DES MOTIFS

La concurrence, en tant que principe fondamental de toute économie de marché, représente un élément consubstantiel au modèle d'organisation économique de notre société et constitue, au niveau des libertés individuelles, la première et la plus importante forme sous laquelle se manifeste l'exercice de la liberté d'entreprise. Il s'impose, par conséquent, d'envisager la défense de la concurrence, conformément aux exigences de l'économie générale et, le cas échéant, de la planification, comme un mandat aux pouvoirs publics, directement rattaché à l'article 38 de la Constitution.

La présente loi répond à cet objectif, à savoir, assurer l'existence d'une concurrence suffisante et la protéger contre toute atteinte à l'intérêt public, tout en demeurant compatible avec les autres lois qui régissent le marché conformément à d'autres exigences juridiques ou économiques, d'ordre public ou privé.

La loi se fonde sur les solides piliers de l'expérience. D'une part, elle s'inspire des normes communautaires concernant la politique de concurrence, qui ont joué un rôle essentiel dans la création et dans le fonctionnement du marché commun. Et, d'autre part, elle naît avec le propos de surmonter les défauts qui ont entravé l'application pleine de la loi 110/1963 du 20 juillet contre les pratiques restreignant la concurrence, qui est maintenant dérogée.

Sous le titre I, "De la libre concurrence", il est établi, au chapitre 1, "Des accords et des pratiques restrictives ou abusives", un système de contrôle souple des accords limitant la concurrence sur le marché national, et il est prohibé aussi bien l'exercice abusif du pouvoir économique que les conduites unilatérales qui, par des moyens déloyaux, risquent de fausser sensiblement la concurrence. Au chapitre 2, "Des concentrations économiques", il est prévu un système de contrôle de celles qui, en raison de leur importance et de leurs effets, pourraient altérer la structure du marché national de façon contraire à l'intérêt public. Et au chapitre 3, "Des aides publiques", il est institué un système qui permettra d'analyser celles-ci à l'aide de critères de concurrence, et, le cas échéant, d'en empêcher les effets indésirables du point de vue des intérêts généraux.

L'application de la loi, pour ce qui est de la garantie de l'ordre économique constitutionnel dans le secteur de l'économie de marché, du point de vue de la défense des intérêts publics, est confiée, au titre II, à des organismes administratifs: le Tribunal de défense de la concurrence, avec des fonctions de décision et, le cas échéant, de proposition, et le Service de défense de la concurrence, chargé de l'instruction des dossiers. Ces dernières ont un caractère particulier, eu égard aussi bien à la complexité essentielle de la matière, qu'à la nécessité d'octroyer au système l'indépendance opportune vis à vis de l'Administration active, tout cela sans préjudice du contrôle judiciaire des actes.

La procédure à appliquer, établie au titre III, recueille les principes d'économie, de célérité et d'efficacité, ainsi que celui de la garantie de la défense des administrés, et elle inclut les formalités spéciales découlant de sa propre nature, l'intervention des Communautés autonomes et du Conseil des associations des consommateurs étant prévue dans certains cas.

En dernier lieu, il est établi un régime de sanctions assurant le respect de la loi, aussi bien sous ses aspects formels que substantifs.

TITRE I

De la libre concurrence

CHAPITRE 1

Des accords et des pratiques restrictives ou abusives

SECTION PREMIERE: DES CONDUITES PROHIBEES ET DES CONDUITES AUTORISEES

Article 1.- *Conduites prohibées*

1. Sont prohibés tout accord, décision ou recommandation collective, ou pratique concertée ou sciemment parallèle, ayant pour objet, produisant ou pouvant produire l'effet d'empêcher, de restreindre ou de fausser la concurrence sur tout le marché national ou sur une partie de ce dernier, et notamment ceux qui consistent dans:

a) la fixation, de façon directe ou indirecte, de prix ou d'autres conditions commerciales ou de service.

b) la limitation ou le contrôle de la production, la distribution, le développement technique ou les investissements.

c) la répartition des marchés ou des sources d'approvisionnement.

d) l'application, dans les relations commerciales ou de service, de conditions inégales à des prestations équivalentes, plaçant de ce fait certains concurrents dans une situation désavantageuse par rapport aux autres.

e) la subordination de la conclusion des contrats à l'acceptation de prestations supplémentaires qui, par leur nature ou selon les usages commerciaux, n'ont pas de lien avec l'objet de ces contrats.

2. Sont nuls de plein droit les accords, décisions et recommandations qui, étant prohibés en vertu des dispositions de l'alinéa 1, ne sont pas inclus dans les exemptions prévues dans la présente loi.

Article 2.- *Conduites autorisées par la loi*

1. Les prohibitions de l'article 1 ne s'appliquent pas aux accords, décisions, recommandations et pratiques résultant de l'application d'une loi ou des dispositions réglementaires qui ont été prises en application d'une loi.

2. Le Tribunal de défense de la concurrence peut soumettre une proposition motivée au Gouvernement, à travers le Ministre de l'Economie et des Finances, en vue de modifier ou de supprimer les situations de restriction de la concurrence établies conformément aux normes légales.

Article 3.- *Cas d'autorisation*

1. Les accords, décisions, recommandations et pratiques visés à l'article 1, ou les catégories de ceux-là, peuvent être autorisés lorsqu'ils contribuent à améliorer la production ou la commercialisation des biens et des services, ou à encourager le progrès technique ou économique, à condition

a) qu'ils permettent aux consommateurs et aux usagers de bénéficier dûment des avantages en résultant,

b) qu'ils n'imposent pas aux entreprises intéressées des restrictions qui ne sont pas indispensables pour atteindre à ces objectifs et

c) qu'ils ne donnent pas aux entreprises y participant la possibilité, pour une partie substantielle des produits ou des services en cause, d'éliminer la concurrence.

2. De même, au cas et dans la mesure où la situation économique générale et l'intérêt public en justifieront l'existence, les accords, décisions, recommandations et pratiques auxquels se réfère l'article 1, ou les catégories de ceux-là, peuvent être autorisés:

a) lorsqu'ils visent à défendre ou à encourager les exportations, à condition qu'ils soient compatibles avec les obligations résultant des conventions internationales ratifiées par l'Espagne, ou bien,

b) lorsqu'ils visent à adapter l'offre à la demande quand une tendance soutenue à la diminution de cette dernière devient manifeste sur le marché ou quand l'excès de capacité productrice est clairement contraire aux intérêts de l'économie ou bien,

c) lorsqu'ils produisent une augmentation suffisamment importante du niveau social et économique des zones ou des secteurs déprimés, ou bien

d) lorsque, eu égard à leur faible importance, ils ne sont pas susceptibles d'affecter sensiblement la concurrence.

Article 4.- *Autorisations particulières du Tribunal*

1. Le Tribunal peut autoriser les accords, décisions,

recommandations et pratiques visés à l'article 1, dans les cas et selon les conditions prévus à l'article 3.

2. L'autorisation du Tribunal doit fixer la date à partir de laquelle elle deviendra effective, cette date ne pouvant être antérieure à celle de la demande d'autorisation. Par ailleurs, il y sera établi la durée de l'octroi de celle-ci ainsi que les conditions ou obligations éventuelles, une fois que les intéressés et le Service de défense de la concurrence auront été entendus, le délai en étant de dix jours.

3. L'autorisation est renouvelée à la demande des intéressés si, de l'avis du Tribunal, les circonstances qui en sont à l'origine persistent.

L'autorisation peut être modifiée ou révoquée s'il se produit une transformation fondamentale des circonstances dont il a été tenu compte pour son octroi.

L'autorisation peut également être révoquée si les bénéficiaires de celle-ci ne respectent pas les conditions ou les obligations établies par le Tribunal ou s'il est constaté que l'octroi y a été fondé sur des données essentielles fournies de façon incomplète ou inexacte par les parties.

Dans tous les cas précités les intéressés et le Service doivent obligatoirement être entendus.

4. Si, trois mois après la présentation de la demande d'autorisation d'accords, de décisions, de recommandations ou de pratiques, le Tribunal n'a notifié aucune décision à cet égard, les entreprises y participant peuvent procéder à son application provisoire. Si le Tribunal n'autorise pas ces accords, il doit fixer dans sa décision la date à partir de la quelle cette application doit cesser, sans qu'il puisse se produire d'effets rétroactifs quant à l'accord notifié pour la durée d'application provisoire.

Article 5.- *Exemptions par catégories*

1. A travers des règlements d'exemption, dont l'élaboration comptera obligatoirement avec le rapport du Tribunal de défense de la concurrence, le Gouvernement peut autoriser les catégories d'accords, de décisions, de recommandations et de pratiques concertées ou sciemment parallèles prévues à l'article 3.1., à condition:

a) que deux entreprises seulement y participent et imposent des restrictions dans la distribution et/ou la fourniture de certains produits donnés pour leur vente ou revente, ou en ce qui concerne l'acquisition ou l'utilisation de droits de propriété industrielle ou intélectuelle, ou de connaissances secrètes industrielles ou commerciales, ou bien

b) qu'elles n'aient comme objectif que l'élaboration et l'application uniforme de normes ou de types, ou la spécialisation dans la fabrication de certains produits donnés, ou la recherche et le développement en commun, ou bien

c) qu'elles aient comme objectif ou comme effet l'accroissement de la rationalité et de la compétitivité des entreprises, notamment des petites et des moyennes.

2. De même, à travers les règlements d'exemption, dont l'élaboration comptera obligatoirement avec le rapport du Tribunal de défense de la concurrence, le Gouvernement peut autoriser les catégories d'accords de décisions, de recommandations et de pratiques visées à l'article 3.2.

Article 6.- *Abus de position dominante*

1. Il est interdit l'exploitation abusive par une ou plusieurs entreprises de sa position dominante sur tout le marché national ou une partie de celui-ci.

2. L'abus peut notamment consister dans:

a) l'imposition, de façon directe ou indirecte, de prix ou d'autres conditions commerciales ou de service non équitables,

b) la limitation de la production, la distribution ou le développement technique au détriment, injustifié, des entreprises ou des consommateurs,

c) le refus injustifié de satisfaire les demandes d'achat de produits ou de prestations de services.

d) l'application, dans les relations commerciales ou de service, de conditions inégales à des prestations équivalentes, plaçant de ce fait certains concurrents dans une situation désavantageuse par rapport aux autres.

e) la subordination de la conclusion des contrats à l'acceptation de prestations supplémentaires qui, par leur nature ou selon les usages commerciaux, n'ont pas de lien avec l'objet de ces contrats.

3. La prohibition est également appliquée aux cas où la position dominante sur le marché d'une ou de plusieurs entreprises a été établie par une disposition légale.

Article 7.- *Atteinte à la libre concurrence par des actes déloyaux*

Le Tribunal de défense de la concurrence connaît, dans les mêmes conditions établies par la présente loi pour les conduites prohibées, des actes de concurrence déloyale qui, du moment qu'ils faussent sensiblement la libre concurrence, sur tout le marché national ou sur une partie de celui-ci, portent atteinte à l'intérêt public.

Article 8.- *Responsabilité conjointe des entreprises de contrôle qui exercent une influence dominante*

Aux effets de l'application de cette loi, il est considéré que la conduite d'une entreprise prévue dans celle-ci peut également être attribuée à l'entreprise qui la contrôle, lorsque le comportement économique de la première est établi par la seconde.

SECTION DEUXIEME: DES SANCTIONS

Article 9.- *Intimations du Tribunal*

Les personnes qui réalisent les actes décrits aux articles 1, 6 et 7 peuvent être mises en demeure par le Tribunal de défense de la concurrence d'y mettre fin, et, le cas échéant, être obligées au elimination des effets de ceux-là.

Article 10.- *Amendes et astreintes*

1. Le Tribunal peut infliger aux agents économiques, entreprises, associations, unions ou groupements de celles-là, qui, de propos délibéré ou par négligence, enfreignent les dispositions des articles 1, 6 et 7, ou ne respectent pas une condition ou une obligation prévue à l'article 4.2, des amendes pouvant s'élever à 150.000.000 de pesetas, ce montant pouvant s'accroître jusqu'à 10 pour 100 du chiffre d'affaires correspondant à l'exercice économique immédiatement antérieur à la décision du Tribunal.

2. Le montant des sanctions est fixé selon l'importance de l'infraction et il est tenu compte de:

a) la modalité et de la portée de la restriction de la concurrence,
b) l'importance du marché affecté,
c) la part de marché de l'entreprise correspondante,
d) l'effet de la restriction de la concurrence sur les concurrents effectifs ou potentiels, sur les autres parties dans le processus économique et sur les consommateurs et les usagers,
e) la durée de la restriction de la concurrence,
f) la récidive dans la réalisation des conduites prohibées.

3. Outre la sanction revenant aux infracteurs, lorsqu'il s'agit d'une personne morale, il peut être imposé une amende allant jusqu'à 5.000.000 de pesetas à ses représentants légaux ou aux personnes intégrées dans les organismes de direction et qui aient intervenu dans l'accord ou la décision.

La sanction ne s'appliquera pas aux personnes qui, bien que faisant partie des organismes collectifs d'administration, n'auraient pas assisté aux réunions ou auraient voté en sens contraire ou auraient réservé leur vote.

4. Il n'est pas imposé d'amendes pour cause d'infraction à l'article 1, s'il a été demandé l'autorisation prévue à l'article 4, en ce qui concerne les conduites auxquelles se rapporte la demande réaliseés pendant la période comprise entre la présentation de la requête et la décision sur celle-ci. Ceci ne s'applique pas lorsque le Tribunal, après examen provisoire de la demande, a pris une décision s'opposant à l'exécution des actes qui constituent son objectif.

Article 11.- *Amendes coercitives*

Le Tribunal, indépendamment des amendes et astreintes, peut infliger aux agents économiques, entreprises, associations, unions ou groupements de celles-là des amendes coercitives de 10.000 à 150.000 pesetas, qui seront réitérées pendant des délais leur permettant d'accomplir ce qui leur aura été ordonné, afin de les obliger à mettre fin à une action prohibée, conformément aux dispositions de cette loi, ou à changer les effets d'une infraction.

Lorsque la décision du Tribunal a été exécutée, il peut être déduit le montant de l'amende résultant de la décision initiale de celui-là, en fonction des circonstances qui y seront intervenues.

Article 12.- *Prescription des infractions et des sanctions*

1. Il y a prescription:

a) Au bout de cinq ans, pour les infractions prévues dans cette loi. Le délai de prescription date du jour où l'infraction a eu lieu.

b) Au bout de trois ans, pour l'action destinée à exiger l'accomplissement des sanctions.

2. Tout acte du Tribunal ou du Service de défense de la concurrence dont l'intéressé aura eu connaissance formelle, tendant à la recherche, à l'instruction ou à la poursuite de l'infraction, interrompt la prescription.

Article 13.- *Autres responsabilités et dédommagement des dommages-intérêts*

1. Les sanctions auxquelles se réfère la présente loi n'excluent pas les autres responsabilités auxquelles il y aura lieu dans chaque cas.

2. L'action de dédommagement des dommages-intérêts, fondée sur le caractère illicite des actes prohibés par cette loi, peut être exercée par les personnes qui estiment avoir été lésées, une fois que la déclaration par la voie administrative et, le cas échéant, juridictionnelle, est définitive. Le régime substantif et de procédure de l'action de dédommagement des dommages-intérêts est celui prévu dans les lois civiles.

CHAPITRE 2

Des concentrations économiques

Article 14.- *Domaine d'application*

Tout projet ou opération de concentration des entreprises ou de prise de contrôle d'une ou de plusieurs entreprises par une autre personne, entreprise ou groupe d'entreprises qui affecte ou est susceptible d'affecter le marché espagnol et notamment à travers la création ou le renforcement d'une position dominante, peut être remis par le Ministre de l'Economie et

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a) instruire les affaires se rapportant aux conduites incluses dans cette loi; b) surveiller l'exécution et le respect des décisions qui seront prises en application de cette loi; c) tenir le Registre de défense de la concurrence; d) procéder à des études et des recherches dans les secteurs économiques en y analysant la situation et le degré de concurrence, ainsi que l'existence éventuelle de pratiques restrictives de la concurrence. Suite aux études et aux recherches effectuées, il pourra proposer qu'il soit pris les mesures visant à surmonter les entraves qui favorisent la restriction; e) informer, conseiller et présenter des propositions dans le domaine des accords et des pratiques restrictives, de la concentration et de l'association des entreprises, du degré de concurrence sur les marchés intérieur et extérieur par rapport au marché national, et au sujet d'autres questions concernant la défense de la concurrence; f) coopérer, dans les matières de concurrence, avec les organismes étrangers et les institutions internationales.

SECTION DEUXIEME.- DE LA COLLABORATION DE L'ADMINISTRATION ET DES FACULTES DU SERVICE DE DEFENSE DE LA CONCURRENCE

Article 32.- *Devoirs de collaboration et d'information*

1. Toute personne physique ou morale est soumise au devoir de

des Finances au Tribunal de défense de la concurrence, pour rapport:

a) quand il y est acquis ou accru un pourcentage égal ou supérieur à 25 pour 100 du marché national, ou une part substantielle de celui-ci, pour un produit ou un service donné, ou bien

b) quand le montant du chiffre d'affaires en Espagne de l'ensemble des participants est supérieur, pendant le dernier exercice comptable, à la somme de 20 milliards de pesetas.

Article 15.- *Notification volontaire et autorisation tacite*

1. Tout projet ou opération de concentration d'entreprises ou de prise de contrôle peut être notifié volontairement au Service de défense de la concurrence par une ou plusieurs des entreprises y participant, au préalable ou trois mois même après sa réalisation.

La notification préalable n'entraînera pas une suspension de l'exécution de l'opération avant son autorisation expresse ou tacite, bien qu'en tout cas cette opération demeurera soumise aux dispositions de l'article 17.

2. Il est établi de façon réglementaire la forme et le contenu de la notification afin d'y assurer le caractère confidentiel

de sa présentation et, le cas échéant, de la partie de celle-ci devant être réservée.

La notification comprend les informations nécessaires permettant d'évaluer la nature et les effets de l'opération et, tout spécialement, les données d'identification des sujets y intervenant, les bilans de l'entreprise et/ou des groupes d'entreprises et leur pourcentage respectif de marché, la forme et le déroulement de l'opération et la situation économique et juridique en résultant.

3. La notification des opérations d'acquisition des actions admises à négociation dans une bourse des valeurs lorsque, conformément aux dispositions de l'article 60 de la loi 24/1988 du marché des valeurs, la réalisation d'une offre publique d'achat sera obligatoire, fait l'objet d'une procédure spécifique à établir par la voie réglementaire.

4. Le Ministre de l'Economie et des Finances soumettra au Tribunal les dossiers des projets ou opérations de concentration ou de prise de contrôle notifiés volontairement par les intéressés qu'il considèrera susceptibles d'entraver le maintien d'une concurrence effective sur le marché, afin que celui-là, après avoir entendu, le cas échéant, les intéressés, se prononce dans un délai de trois mois.

Il est considéré que l'administration ne s'oppose pas à l'opération si, un mois après la notification volontaire au Service, le Tribunal n'en a pas eu connaissance, ou si celui-ci ne s'est pas prononcé, conformément à l'alinéa précédent, dans le délai qui y est indiqué.

Le Service notifiera aux intéressés la date à laquelle les pièces ont été remises au Tribunal de défense de la concurrence.

Seules les opérations notifiées volontairement au Service de défense de la concurrence bénéficient des autorisations tacites et des délais signalés dans cet article.

Article 16.- *Rapport du Tribunal*

Pour évaluer si un projet ou une opération de concentration ou de prise de contrôle peut entraver le maintien de la concurrence effective sur le marché, il est procédé à une analyse de ses effets restrictifs, prévisibles ou constatés, compte tenu fondamentalement des circonstances suivantes:

a) Les limites du marché affecté.
b) Sa structure.
c) Les possibilités de choix des fournisseurs, des distributeurs et des consommateurs ou usagers.
d) Le pouvoir économique et financier de l'entreprise.

e) L'évolution de l'offre et de la demande.

f) La concurrence extérieure.

Le Tribunal peut également prendre en considération la contribution que la concentration ou la prise de contrôle est à même d'apporter à l'amélioration des systèmes de production ou de commercialisation, à la promotion du progrès technique ou économique, à la compétitivité internationale de l'industrie nationale ou aux intérêts des consommateurs ou des usagers, et si cet apport suffit à compenser les effets restrictifs sur la concurrence.

Article 17.- *Compétence du Gouvernement*

Le Tribunal de défense de la concurrence soumet son avis au Ministre de l'Economie et des Finances afin qu'il le présente au Gouvernement qui, dans un délai maximum de trois mois, peut décider de:

a) ne pas s'opposer à l'opération de concentration,

b) subordonner son approbation au respect des conditions permettant d'apporter au progrès économique et social une contribution suffisante afin de compenser les effets restrictifs sur la concurrence,

c) la déclarer irrecevable, auquel cas il peut:

c.1) ordonner qu'il n'y soit pas procédé, si elle n'avait pas été amorcée,

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pratiques autorisés par le Tribunal et ceux déclarés totalement ou partiellement prohibés. Il y est également inscrit les opérations de concentration d'entreprises ou de prise de contrôle visées aux articles 14 et 15 de cette loi.

A ces effets, le Tribunal communique ses décisions au Service.

TITRE III
De la procédure

CHAPITRE 1
De la procédure en matière d'accords et de pratiques prohibées et autorisées

SECTION PREMIERE: DE LA PROCEDURE AUPRES DU SERVICE

Article 36.- *Mise en marche de la procédure*

1. La procédure est entamée par le Service d'office ou à la requête de la partie intéressée.

c.2) ordonner les mesures opportunes pour la mise en oeuvre d'une concurrence effective, dont la déconcentration ou la cessation du contrôle.

Article 18.- *Sanctions*

Si les ordres donnés conformément à l'article 17 ne sont pas respectés, le Gouvernement, sans préjudice de l'application des mesures d'exécution prévues dans le système juridique, peut imposer à chacune des entreprises concernées une amende pouvant s'élever à 10 pour 100 de leur chiffre d'affaires respectif en Espagne.

CHAPITRE 3

Des aides publiques

Article 19.- *Compétence du Tribunal*

1. Le Tribunal de défense de la concurrence, à la demande du Ministre de l'Economie et des Finances, peut examiner les aides octroyées aux entreprises à la charge des ressources publiques, eu égard aux effets de celles-là sur les conditions de concurrence.

Vu l'avis du Tribunal, le Ministre peut proposer aux pouvoirs publics la suppression ou la modification des aides ainsi que, le cas échéant, d'autres mesures visant au maintien ou au rétablissement de la concurrence.

2. Aux effets prévus à l'alinéa précédent, le Tribunal peut adresser des communications ou des mises en demeure aux entreprises, et solliciter des administrations publiques des informations concernant les apports de ressources publiques ou les avantages économiques octroyés ou obtenus.

TITRE II

Des organismes de défense de la concurrence

CHAPITRE 1

Du Tribunal de défense de la concurrence

SECTION PREMIERE: DE L'ORGANISATION DU TRIBUNAL

Article 20.- *Affectation organique du Tribunal: siège et domaine territorial de sa compétence*

Le Tribunal de défense de la concurrence, qui relève du point de vue organique du Ministère compétent en raison de la matière traitée, exerce ses fonctions avec une indépendance totale, en se soumettant à l'ordre juridique.

Il a son siège dans la capitale de l'Etat, sa compétence s'étend sur tout le territoire espagnol et il jouit du traitement qui lui correspond selon la tradition.

Article 21.- *Composition*

1. Le Tribunal de défense de la concurrence est composé d'un Président et de huit membres, nommés par le Gouvernement sur proposition du Ministre de l'Economie et des Finances, parmi des juristes, des économistes et d'autres professionnels de prestige ayant plus de quinze ans d'exercice professionnel.

2. Le Président et les membres sont nommés pour six ans renouvelables. La moitié des membres sont renouvelés tous les trois ans.

3. Les membres du Tribunal ont le rang de hauts fonctionnaires. Lorsque la nomination portera sur le personnel au service des administrations publiques en fonction, celles-ci passeront à la situation de services spéciaux ou leur équivalent.

4. Le Tribunal choisit parmi les membres un Vice-président qui remplace le Président en cas de vacance, d'absence ou de maladie.

5. Le Tribunal est assisté d'un Secrétaire.

Article 22.- *Incompatibilités des membres*

1. Les membres du Tribunal de défense de la concurrence exercent leur fonction à plein temps et leurs incompatibilités sont celles établies de façon générale pour les hauts fonctionnaires de l'administration de l'Etat.

2. Il sera excepté de la règle précédente l'exercice occasionnel de postes ou d'activités dans des organismes internationaux, en représentation ou à la demande du Gouvernement espagnol, pour lesquels il ne sera pas perçu de rémunération à l'exception des indemnités de séjour et des indemnités réglementaires correspondantes.

Article 23.- *Causes de cessation et de suspension dans l'exercice des fonctions*

1. Le Président, le Vice-président et les membres du Tribunal de défense de la concurrence cessent leurs fonctions suite à: a) leur renonciation; b) l'expiration du terme de leur mandat; c) l'apparition soudaine d'une incompatibilité; d) la condamnation en raison d'un délit de dol; e) une incapacité permanente; f) Après la cessation résultant d'un manquement grave aux devoirs de leur poste, sur proposition des trois quarts du Tribunal.

2. Le Président, le Vice-président et les membres du Tribunal de défense de la concurrence ne peuvent être suspendus dans l'exercice de leurs fonctions que: a) lorsqu'il est pris contre eux un mandat d'arrêt ou de mise en accusation en raison d'un délit de dol; b) lorsqu'il est décidé à leur sujet un procès disciplinaire ou une déclaration d'incapacité transitoire; c) suite à un jugement définitif condamnatoire imposant la suspension comme peine principale ou accessoire.

SECTION DEUXIEME: DES FONCTIONS ET DES FACULTES DU TRIBUNAL

Article 24.- *Fonctionnement du Tribunal*

Le Tribunal est considéré valablement constitué avec la présence du Président ou du Vice-président et de cinq membres.

Le Tribunal peut agir à travers des commissions dans le cours de certaines affaires.

Les accords sont pris à la majorité absolue des votes des membres présents. En cas de ballottage, la décision en revient au vote du président.

Article 25.- *Compétence*

Il ressort du Tribunal de: a) résoudre les affaires qui lui sont attribuées par cette loi; b) saisir le Service de défense de la concurrence de l'instruction des affaires; c) autoriser les accords, décisions, recommandations et pratiques visés à l'article 1, dans les cas et conformément aux conditions prévus à l'article 3; d) réaliser les fonctions d'arbitrage, aussi bien de droit que d'équité que les lois lui confieront.

Article 26.- *Fonctions de consultation et d'émission de rapports*

1. Il ressort également du Tribunal de: a) informer des avant-projets de normes ayant le rang de lois affectant la concurrence; b) adresser des rapports à tout pouvoir ou organisme de l'Etat, et c) étudier et soumettre au Gouvernement les propositions opportunes visant à la modification de la loi, conformément aux préceptes de l'expérience dans l'application du droit national et communautaire.

2. Le Tribunal peut être consulté par les commissions des chambres législatives en ce qui concerne les projets ou propositions de loi ainsi que pour toute autre question portant sur la libre concurrence.

Le Tribunal peut également émettre des rapports sur des matières de libre concurrence à la demande du Gouvernement ou de l'un quelconque des départements des ministères, des Communautés autonomes, des collectivités locales et des organisations d'entreprises, syndicales ou de consommateurs et d'usagers.

3. Le Tribunal encourage et effectue des études et des travaux de recherche en matière de concurrence.

Article 27.- *Autres fonctions*

Il revient au Tribunal de: a) établir son réglement interne, dans lequel il sera fixé son fonctionnement administratif et l'organisation de ses services; b) maintenir des rapports avec d'autres organismes analogues; c) résoudre les questions de récusation, d'incompatibilité et de correction disciplinaire et apprécier l'incapacité et le manquement grave à leurs fonctions du Président, du Vice-président et des membres; d) nommer et démettre de ses fonctions le secrétaire;

Secretaire; e) proposer ou, le cas échéant, informer du projet du personnel au service du Tribunal; f) préparer l'avant-projet de budget général des dépenses du Tribunal, et g) élaborer un mémoire annuel.

Article 28.- *Fonctions du Président*

1. Le Président du Tribunal de défense de la concurrence a comme fonctions de: a) représenter celui-ci dans ses rapports avec les autres organismes publics; b) convoquer la séance plénière de sa propre initiative ou à la demande d'au moins trois de ses membres, et la présider; c) maintenir l'ordre et la bonne gouverne du Tribunal; d) communiquer les vacances de postes qui se produiront au Tribunal; e) octroyer des congés et des permissions aux membres et au personnel du Tribunal; f) ordonner les dépenses et g) résoudre les autres questions non assignées au Tribunal en séance plénière.

2. Le Président peut déléguer au Vice-président les facultés qu'il considère opportunes.

Article 29.- *Sanctions en cas de manquement au devoir de fournir des informations*

1. Toute personne physique ou morale est soumise au devoir de

collaboration avec le Tribunal de défense de la concurrence, et est obligée de fournir, à la demande de celui-ci, toute sorte de données et d'informations nécessaires à l'application de cette loi.

2. Le Tribunal de défense de la concurrence peut infliger des amendes pouvant s'élever jusqu'à 1.000.000 de pesetas aux personnes physiques et morales qui, sciemment ou par négligence, ne lui fournissent pas des données ou des informations ou qui le font de façon incomplète ou inexacte.

CHAPITRE 2

Du Service de défense de la concurrence

SECTION PREMIERE: DE L'AFFECTATION ET DES FONCTIONS DU SERVICE

Article 30.- *Affectation organique*

Le Service de défense de la concurrence relève du Ministère compétent en raison de la matière traitée.

Article 31.- *Fonctions*

Le Service de défense de la concurrence a comme fonctions de:

collaboration avec le Service de défense de la concurrence et est obligée de fournir, à la demande de celui-ci, toute sorte de données et d'informations permettant l'application de cette loi.

2. Le manquement à l'obligation établie à l'alinéa précédent est sanctionné par le Directeur du Service avec une amende de 50.000 à 1.000.000 de pesetas.

Article 33.- *Fonctions de recherche et d'inspection*

1. Les fonctionnaires, dûment autorisés par le Directeur du Service de défense de la concurrence, peuvent effectuer les enquêtes permettant l'application adéquate de cette loi.

2. Les fonctionnaires, au cours des vérifications, peuvent examiner, obtenir des copies ou des relevés des livres et des documents, y compris ceux à caractère comptable et, s'il s'avérait nécessaire, les retenir pendant une durée maximum de dix jours.

3. Lors de leurs vérifications, ils peuvent se faire accompagner par des experts dans les matières faisant l'objet de celles-là.

4. L'obstruction à la tâche de vérification peut être sanctionnée par le Directeur du Service avec une amende continue pouvant s'élever à 150.000 pesetas par jour.

Article 34.- *Recherche à domicile*

1. L'accès aux locaux peut avoir lieu avec le consentement de leurs occupants ou au moyen d'un mandat judiciaire.

2. En cas de consentement des occupants, le fonctionnaire chargé de l'enquête présentera le document correspondant et il en remettra une copie où figureront sa désignation par le Directeur du Service de défense de la concurrence, les sujets soumis à la recherche, les données, documents et opérations qui devront faire l'objet de la vérification, la date à laquelle l'action aura lieu et la portée de la recherche.

3. Il en revient au Directeur du Service de défense de la concurrence de demander le mandat judiciaire dont le document devra inclure les informations prévues au numéro précédent.

Le juge ou la cour compétente se prononcera dans un délai maximum de quarante-huit heures.

4. Il sera dressé un acte de toutes les entrées dans les

locaux et de l'inspection qui sera signé par le fonctionnaire autorisé et par un des occupants, et il y sera joint, le cas échéant, une liste des documents retenus temporairement.

5. Le fonctionnaire délivrera une copie de l'acte au nom de la personne qui aura autorisé l'entrée dans le local. Si l'entrée et la vérification avaient résulté d'un mandat judiciaire, l'original de l'acte et les documents retenus, le cas échéant, seront remis au juge ou à la cour correspondante, qui délivrera une copie au nom du fonctionnaire qui a mené à bout l'enquête, et une autre au nom de l'occupant auprès duquel la recherche a eu lieu. Il sera également remis au fonctionnaire, le cas échéant, la documentation retenue.

6. Les données et les informations obtenues ne peuvent être utilisées qu'aux fins prévues dans cette loi.

SECTION TROISIEME: DU REGISTRE DE DEFENSE DE LA CONCURRENCE

Article 35.- *Caractère public du Registre et des actes pouvant être inscrits*

Le Registre de défense de la concurrence est public et il y est inscrit les accords, décisions, recommandations et

La dénonciation des conduites prohibées par ce texte légal est publique; toute personne, intéressée ou non, peut l'adresser au service qui ordonnera, s'il y observe des indices raisonnables de son existence, l'ouverture d'un dossier.

2. Le Service peut convenir de l'instruction d'une information réservée avant de décider de l'ouverture d'un dossier ou, le cas échéant, d'en classer les pièces.

3. Dans l'ordonnance par laquelle il est décidé d'ouvrir un dossier, il sera nommé un instructeur et, le cas échéant, un greffier, nomination qui sera notifiée aux intéressés.

4. Lorsque le dossier aura été amorcé, il pourra être publié une note succinte portant sur les points fondamentaux de celle-là, afin que quiconque puisse y apporter des informations dans un délai ne dépassant pas quinze jours.

Cette note sera publiée au "Journal officiel de l'Etat" et, le cas échéant, dans un journal de diffusion nationale ou dans celui de plus grand tirage dans le département où ont lieu les pratiques faisant l'objet du dossier.

5. Le Service, de sa propre initiative ou à la demande des intéressés, peut ordonner l'accumulation des dossiers lorsqu'il existe entre eux des rapports directs.

6. Le Service communique au Tribunal les dénonciations reçues, le classement des pièces et les ordonnances d'ouverture des dossiers.

Article 37.- *Instruction du dossier de sanction*

1. Le Service procède à tous les actes d'instruction nécessaires pour l'éclaircissement des faits et l'établissement des responsabilités.

Les faits pouvant constituer une infraction sont recueillis dans une communication des griefs qui est notifiée aux infracteurs présomptifs afin que, dans un délai de quinze jours, ils puissent y répondre et, le cas échéant, proposer les preuves qu'ils considèreront pertinentes, et qu'une fois la période probatoire achevée, il en soit effectué l'évaluation dans un délai de dix jours.

Les preuves proposées par les infracteurs présomptifs seront recueillies dans le rapport du Service, dans lequel il sera exprimé l'administration de celles-ci ou, le cas échéant, leur débouté.

2. Les intéressés peuvent, à tout moment de la procédure, proposer des allégations, qui sont prises en considération

par le Service au moment de rédiger le rapport auquel se réfère l'alinéa suivant.

3. Le Service, après avoir instruit le dossier, le remet au Tribunal en y joignant un rapport où il exprime les conduites observées, leurs antécédents, les effets en résultant et la qualification qu'il a conclue des faits.

4. Le Service peut surseoir l'affaire, après avoir entendu les intéressés. Contre la décision de non-lieu il peut être interjeté un recours conformément aux dispositions des articles 48 et 49.

Article 38.- *Instruction du dossier d'autorisation*

1. La procédure destinée à autoriser les accords, décisions, recommandations et pratiques visés à l'article 3 est amorcée à la demande de la partie intéressée.

2. Une fois que le dossier visant la constatation de l'existence d'accords, de décisions, de recommandations ou de pratiques prohibées à l'article 1 a été amorcé, les intéressés peuvent demander que ceux-ci soient autorisés, conformément à l'article 3.

3. Au cours des démarches visant aux autorisations, le Service publie également la note succinte prévue à l'article 35.4,

il effectue les enquêtes nécessaires, il entends les intéressés et il remet le dossier au Tribunal, dans un délai maximum de trente jours, en y joigant la qualifications qu'il estime opportune.

4. Dans les cas visés à l'article 3.1 de cette même loi, le rapport du Conseil des associations des consommateurs, prévu par l'article 22.5 de la loi 26/1984 du 19 juillet est obligatoire.

SECTION DEUXIEME: DE LA PROCEDURE AUPRES DU TRIBUNAL DE DEFENSE DE LA CONCURRENCE

Article 39.- *Admission du dossier à la procédure de jugement*

Le Tribunal, après avoir reçu le dossier, décide de son admission dans un délai de cinq jours, en tenant compte s'il y a été apporté les antécédents nécessaires. Autrement, il requiert du Service les démarches opportunes qui peuvent être complétées par celles que celui-ci considère pertinentes.

Article 40.- *Phase probatoire du dossier*

1. Si le Tribunal admettait le dossier à la procédure de jugement il le manifestera aux intéressés pendant un délai de quinze jours, pendant lequel il pourra demander qu'ait lieu

l'audience et proposer les preuves qu'il estimera nécessaires, dont la pertinence fera l'objet d'une décision de la part du Tribunal dans un délai de cinq jours.

2. Le Tribunal peut ordonner la pratique d'autant de preuves qu'il estime opportunes et il y fait intervenir les intéressés.

3. Le résultat des actes de procédure pour l'établissement de la preuve sera communiqué aux intéressés, qui pourront, dans un délai de dix jours, présenter autant d'allégations qu'ils estimeront opportunes du fait de leur portée et de leur importance.

4. Il n'est admis aucun recours par la voie administrative contre les décisions du Tribunal.

Article 41.- *Audience ou écrit de conclusions*

1. Le Tribunal ordonnera qu'ait lieu une audience lorsqu'il l'estimera nécessaire. Autrement, il octroiera aux intéressés un délai de quinze jours pour formuler des conclusions.

2. L'audience sera réservée et contradictoire et il y interviendra les intéressés, leurs représentants et le Service de défense de la concurrence. Le Tribunal pourra également y requérir la présense des personnes qu'il estimera nécessaires.

Annex IV

UNITED STATES OF AMERICA

A. The Sherman Act
The Statutes at Large of the United States of America, Chapter 647

An Act to protect trade and commerce against
unlawfull restraints and monopolies
(Sections 1 to 8)

The Sherman Act

§ 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 1, 26 Stat. 209; Aug. 17, 1937, ch. 690, title VIII, 50 Stat. 693; July 7, 1955, ch. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708; Dec. 12, 1975, Pub. L. 94-145, § 2, 89 Stat. 801.)

AMENDMENTS

1975—Pub. L. 94-145 struck out from first sentence two provisos granting anti-trust exemption to State fair trade laws.

1974—Pub. L. 93-528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

1955—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand dollars".

1937—Act Aug. 17, 1937, inserted two provisos.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4 of Pub. L. 94-145 provided that: "The amendments made by sections 2 and 3 of this Act [amending sections 1 and 45 of this title] shall take effect upon the expiration of the ninety-day period which begins on the date of enactment of this Act [Dec. 12, 1975]."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-544, § 1, Oct. 24, 1984, 98 Stat. 2750, provided: "That this Act [enacting sections 34 to 36 of this title and provisions set out as a note under section 34 of this title] may be cited as the 'Local Government Antitrust Act of 1984'."

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-290, title IV, § 401, Oct. 8, 1982, 96 Stat. 1246, provided that: "This title [enacting section 6a of this title and amending section 45 of this title] may be cited as the 'Foreign Trade Antitrust Improvements Act of 1982'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96-493, § 1, Dec. 2, 1980, 94 Stat. 2568, provided: "That this Act [enacting section 26a of this title] may be cited as the 'Gasohol Competition Act of 1980'."

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94-435, Sept. 30, 1976, 90 Stat. 1383, provided: "That this Act [enacting sections 15c to 15h, 18a, and 66 of this title, amending sections 12, 15b, 16, 26, and 1311 to 1314 of this title, section 1505 of Title 18, Crimes and Criminal Procedure, and section 1407 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 1, 8, 15c, 18a, and 1311 of this title] may be cited as the 'Hart-Scott-Rodino Antitrust Improvements Act of 1976'."

SHORT TITLE OF 1975 AMENDMENT

Section 1 of Pub. L. 94-145 provided: "That this Act [amending sections 1 and 45 of this title and enacting provisions set out as a note under section 1 of this title] may be cited as the 'Consumer Goods Pricing Act of 1975'."

SHORT TITLE OF 1974 AMENDMENT

Section 1 of Pub. L. 93-528 provided: "That this Act [amending sections 1, 2, 3, 16, 28, and 29 of this title, section 401 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and sections 43, 44, and 45 of former Title 49, Transportation, and enacting provisions set out as notes under sections 1 and 29 of this title] may be cited as the 'Antitrust Procedures and Penalties Act'."

SHORT TITLE

Pub. L. 94-435, title III, § 305(a), Sept. 30, 1976, 90 Stat. 1397, added immediately following the enacting clause of act July 2, 1890, the following: "That this Act [sections 1 to 7 of this title] may be cited as the 'Sherman Act'."

CROSS REFERENCES

Antitrust laws inapplicable to labor organizations, see section 17 of this title.

Carriers relieved from operation of this chapter, see section 11341 of Title 49, Transportation.

Combinations in restraint of import trade, see section 8 of this title.

Article 42. *Actes de procédure dans le but de completer l'instruction*

1. Après l'audience ou lorsque le délai de formulation des conclusions aura pris fin, et avant d'adopter une décision, le Tribunal peut ordonner, afin de completer l'instruction, autant d'actes nécessaires pour l'établissement de la preuve, y compris ceux de déclaration et de reconnaissance, et solliciter de nouveaux rapports au Service ou à tout autre organisme, public ou privé, et aux autorités ou aux particuliers, portant sur les questions que le Tribunal lui-même établira.

2. L'arrêt pris à cet effet établi le délai qui doit y être appliqué, à condition qu'il soit possible de le fixer, ainsi que l'intervention des intéressés.

3. Toutes les preuves ordonnées comme actes permettant d'obtenir une meilleure information sont administrées auprès du Tribunal ou d'un membre désigné à cette fin.

Article 43.- *Audition de l'Instructeur et résolution de l'affaire*

1. Le Tribunal, lorsqu'il l'estime opportun, peut convoquer l'Instructeur afin qu'il l'éclaire sur certains aspects donnés du dossier.

En tout cas, l'Instructeur est entendu lorsque le Tribunal, au moment d'adopter une décision, estime que la question soumise à sa connaissance peut n'avoir pas été dûment évaluée par le Service et qu'elle peut être susceptible d'une autre qualification. La nouvelle qualification est soumise aux intéressés afin que, dans un délai de quinze jours, ils formulent les allégations qu'ils estimeront opportunes, le délai de décision en demeurant suspendu.

2. Le Tribunal, au terme de ces actes, adopte une décision dans un délai maximum de vingt jours.

3. La décision du Tribunal met fin à la voie administrative.

Article 44.- *Coïncidence avec une procédure auprès des organismes communautaires*

1. Le Tribunal peut ajourner sa décision, à la demande d'une partie, s'il était justifié avec des documents qu'il est suivi une procédure concernant les mêmes faits auprès des organismes communautaires. La suspension est levée lorsque ceux-ci ont adopté une décision définitive. La partie qui a allégué l'exception doit communiquer au Tribunal la décision qui a été prise, dans un délai d'un mois à compter du jour où elle en aura eu connaissance.

2. Si les organismes communautaires ont imposé une sanction, le Tribunal doit en tenir compte afin d'y adapter la sanction correspondant à la présente loi, et il peut la compenser, quitte à déclarer l'infraction.

SECTION TROISIEME: DES MESURES INTERIMAIRES

Article 45.- *Catégories et procédure destinée à les ordonner*

1. Le Service, une fois que le dossier a été amorcé, peut à tout moment, d'office ou à la demande des intéressés, proposer au Tribunal de défense de la concurrence les mesures interimaires permettant d'assurer l'efficacité de la décision qui au moment voulù sera adoptée, à savoir notamment:

a) Ordres de cessation ou d'imposition de certaines conditions données visant à éviter le dommage pouvant résulter des conduites auxquelles se rapporte le dossier.

b) Cautionnement de toute sorte, sauf le cautionnement personnel, déclaré suffisant pour répondre de l'indemnité des dommages et intérêts qui pourraient se produire.

Si c'étaient les intéressés qui ont proposé l'adoption de mesures interimaires le Tribunal peut leur exiger un cautionnement.

2. Il ne peut pas être pris de mesures interimaires lorsqu'elles sont susceptibles de porter des préjudices irréparables aux intéressés ou lorsqu'elles impliquent une violation des droits fondamentaux.

3. Le Tribunal entend les intéressés dans un délai de cinq jours et il décide dans un délai de trois jours de l'opportunité des mesures.

4. Le Tribunal, de soi-même ou à la demande du Service peut, afin d'assurer le respect des mesures interimaires imposer des amendes coercitives avec les garanties et pour le montant prévus à l'article 11.

5. Le Service peut proposer au Tribunal, d'office ou à la demande d'une partie, à tout moment du dossier, la suspension, la modification ou la révocation des mesures conservatoires, en vertu des circonstances qui se sont produites ou qui n'avaient pu être connues lorsque ces mesures ont été prises.

6. L'adoption des mesures conservatoires ne peut en aucun cas

s'étendre sur plus de six mois et, en tout cas, ces mesures cessent quand la décision du Tribunal est exécutée.

SECTION QUATRIEME: DES DECISIONS DU TRIBUNAL

Article 46.- *Contenu, éclaircissement et publicité*

1. Les décisions du Tribunal peuvent déclarer:

a) l'existence de pratiques ou d'accords prohibés,
b) l'existence d'un abus de position dominante,
c) la non justification de l'existence de pratiques prohibées,
d) l'autorisation d'accords ou de pratiques susceptibles d'exception.

2. Les décisions du Tribunal peuvent contenir

a) l'ordre de cessation des pratiques prohibées dans un délai donné,
b) l'imposition de conditions ou d'obligations spécifiques,
c) l'ordre d'elimination des effets des pratiques prohibées contraires à l'intérêt public,
d) l'imposition d'amendes,
e) la qualification de pratique autorisée,
f) toutes autres mesures autorisées par la présente loi.

3. La décision déniant une demande d'autorisation sommera, le cas échéant, les demandeurs et autres auteurs de pratiques prohibées, qui auront été parties dans l'affaire, à se désister de celles-ci, en les avertissant que si, après notification de la décision, ils désobéissaient la sommation, ils encourraient les sanctions prévues à l'article 10.

4. Le Tribunal peut, d'office ou à la demande d'une partie, éclaircir des notions obscures ou suppléer toute omission que ses décisions pourraient contenir.

Il peut être fait des éclaircissements ou addenda, dans les cinq jours ouvrables suivant la notification de la décision ou, le cas échéant, à la demande d'éclaircissements ou d'addenda, qui devra être présentée dans le délai, sans extension possible, de trois jours suivant la notification.

Les erreurs matérielles ou arithmétiques peuvent être rectifiées à tout moment.

5. Lorsque les décisions de sanction du Tribunal ont été notifiées aux intéressés, elles sont publiées au "Journal officiel de l'Etat" et, sous la forme que celui-ci considère adéquate, dans un ou plusieurs journaux de diffusion nationale et des départements où les personnes ou les entreprises

sanctionnées ont leur siège ou réalisent les pratiques. Le coût de l'insertion des décisions est à la charge de la personne ou de l'entreprise sanctionnée.

Le Tribunal peut également décider de la publication de ses décisions de non sanction, sous la forme prévue à l'alinéa précédent.

6. La désobéissance aux sommations du Tribunal est punie conformément aux dispositions du code pénal.

SECTION CINQUIEME: DES RECOURS

Article 47.- *Recours contre les actes de classement et de procédure issus du Service*

Il peut être présenté un recours auprès du Tribunal contre les actes de classement et de procédure du Service établissant l'impossibilité de poursuivre une procédure ou produisant un manque de défense, dans un délai de dix jours.

Article 48.- *Formalités et décision*

1. Le recours peut présenté auprès du Tribunal qui ordonne au Service de lui remettre le dossier avec son rapport, dans un délai de trois jours.

2. Au cas où le Tribunal estimerait que le recours a été interjeté en dehors du délai, il le refusera sans autres formalités.

3. Lorsqu'il aura reçu le dossier il le communiquera aux intéressés afin que, dans un délai de quinze jours, ceux-ci allèguent et présentent les documents et les justifications qu'ils estimeront pertinents.

4. Après avoir rempli les formalités précédentes, le Tribunal décide dans un délai de dix jours.

Article 49.- *Recours dontre les décisions du Tribunal*

Il n'existe aucun recours par la voie administrative contre les mesures interimaires et les décisions définitives adoptées par le Tribunal de défense de la concurrence et il ne peut être interjeté qu'un recours contentieux-administratif.

CHAPITRE 2

Dispositions communes

Article 50.- *Caractère supplétoire de la loi de procédure administrative*

Dans les cas non prévus expressément dans cette loi ou dans les dispositions réglementaires adoptées pour son exécution, le Tribunal et le Service de défense de la concurrence adapteront leur action à la loi de procédure administrative et aux normes générales qui la développent qui, en tout cas, auront un caractère supplétoire.

Article 51.- *Collaboration des administrations publiques*

1.- Toutes les administrations publiques doivent fournir les informations ou présenter les rapports qui leur seront demandés.

2. Le Tribunal de défense de la concurrence et le Service de défense de la concurrence, dans n'importe quelle phase de la procédure, peuvent requérir la collaboration des Communautés autonomes. A cet effet, ils leur communiqueront les actes constituant le dossier qui, du fait de leur importance, seront susceptibles de faciliter une collaboration adéquate.

3. Les Communautés autonomes, de leur côté, peuvent apporter les informations et les observations qu'elles considèreront opportunes, qui seront jointes au dossier.

Article 52.- *Obligation du secret*

1. Tous ceux qui interviendront dans le cours des dossiers

prévus dans cette loi et qui en connaîtront en raison de leur profession ou de leur poste doivent garder le secret en ce qui concerne les faits dont ils auront eu connaissance.

2. Sans préjudice des responsabilités pénales et civiles pouvant correspondre aux infracteurs de l'obligation du secret, la violation de celle-ci est toujours considérée comme une faute disciplinaire très grave.

Article 53.- *Traitement d'information confidentielle*

Le Service et le Tribunal de défense de la concurrence à tout moment du dossier peuvent ordonner, d'office ou à la demande des intéressés, que les données ou les documents considérés confidentiels demeurent secrets et qu'ils constituent une pièce séparée.

Article 54.- *Recouvrement par la voie d'exécution*

Il est procédé au recouvrement par la voie d'exécution des amendes, conformément aux dispositions du règlement général de recouvrement.

Article 55.- *Caractère préjudiciel du procès pénal*

L'instruction du procès pénal auprès des cours de justice suspendra la résolution du dossier administratif qui aurait été ouvert pour les mêmes faits.

DISPOSITIONS TRANSITOIRES

Première.- 1. Les accords, décisions, recommendations et pratiques visées à l'article 1 de cette loi et existant lors de l'entrée en vigueur de celle-ci, pour lesquels les intéressés prétendent obtenir l'autorisation à laquelle se rapporte l'article 4, doivent être communiqués au Service de défense de la concurrence, aux effets établis à l'article 38, dans un délai de six mois à compter de la publication de la présente loi au "Journal officiel de l'Etat".

2. Sont exemptés de l'obligation établie au numéro précédent les accords et les décisions autorisés par le Tribunal de défense de la concurrence conformément aux dispositions de l'article 5 de la loi 110/1963 du 20 juillet.

Deuxième.- Les inscriptions effectuées au Registre des pratiques restrictives de la concurrence, créé par la loi 110/1963, font partie du Registre auquel se réfère l'article 35.

Troisième.- Il s'applique aux formalités et aux décisions concernant les dossiers déjà amorcés avant l'entrée en vigueur de cette loi les dispositions en vigueur jusqu'à présent.

Quatrième.- Le premier renouvellement des membres du Tribunal de défense de la concurrence se fera par tirage au sort au moment de l'entrée en vigueur de cette loi.

Cinquième.- Jusqu'à l'adoption d'une disposition légale adéquate, les décisions du Tribunal de défense de la concurrence peuvent être contestées directement auprès de la Chambre du contentieux-administratif du Tribunal national.

DISPOSITION ABROGATOIRE

Sont abrogés la loi 110/1963 du 20 juillet concernant la répression des pratiques restrictives de la concurrence et, dans la mesure où ils s'opposeront à la présente loi, les décrets 538/1965 du 4 mars approuvant le règlement du Tribunal de défense de la concurrence; 422/1970 du 5 février approuvant le règlement organique et fonctionnel et de procédure du Service de défense de la concurrence; 3564/1972 du 23 décembre modifiant et refondant certains articles du règlement du Service de défense de la concurrence; l'ordre du 28 septembre 1973 développant l'article 9 du règlement du Tribunal de défense de la concurrence; l'article 4 du décret-loi royal 18/1976 du 8 octobre concernant les mesures économiques, et les décrets royaux 2574/1982 du 24 septembre modifiant certains articles du règlement du Tribunal de défense de la concurrence, et 1936/1985 du 9 octobre mettant à jour le statut des membres du Tribunal de défense de la concurrence.

DISPOSITION FINALE

Le Gouvernement est autorisé à prendre les dispositions nécessaires pour le développement et l'exécution de la présente loi.

Par conséquent,
J'ordonne à tous les espagnols, aux particuliers et aux autorités, de respecter et de faire respecter cette loi.

Palais de la Zarzuela, le 17 juillet 1989.- JUAN CARLOS R. - Le Président du Gouvernement, *Felipe González Márquez*.

Conspiracy to commit offense or to defraud United States, see section 371 of Title 18, Crimes and Criminal Procedure.

Discrimination in price, services or facilities, see section 13 of this title.

Fishing industry, restraints of trade in, see section 522 of this title.

Monopolies prohibited, see section 2 of this title.

Trusts in territories or District of Columbia prohibited, see section 3 of this title.

Sherman Act Referred to in Other Sections

The Sherman Act [15 U.S.C. 1 to 7] is referred to in sections 12, 15c, 15d, 29, 30, 31, 44, 62, 1012, 1013, 3301, 3503 of this title; title 7 section 225; title 8 section 1251; title 10 section 7430; title 12 sections 1828, 1849; title 16 section 2602; title 30 sections 184, 1413; title 33 section 1502; title 40 section 488; title 42 sections 2135, 5417, 5909, 6202, 8235f, 9102; title 43 sections 970, 1331, 1770; title 45 section 791; title 46 App. sections 814, 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

Section Referred to in Other Sections

This section is referred to in sections 4, 6, 6a, 7, 18a of this title.

§ 2. Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 2, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708.)

Amendments

1974—Pub. L. 93-528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

1955—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand dollars".

Cross References

Antitrust laws inapplicable to labor organizations, see section 17 of this title.

Carriers relieved from operation of this chapter, see section 11341 of Title 49, Transportation.

Combinations in restraint of import trade, see section 8 of this title.

Conspiracy to commit offense or to defraud United States, see section 371 of Title 18, Crimes and Criminal Procedure.

Discrimination in price, services or facilities, see section 13 of this title.

Fishing industry, monopolies in, see section 522 of this title.

Section Referred to in Other Sections

This section is referred to in section 18a of this title; title 12 section 1849.

§ 3. Trusts in Territories or District of Columbia illegal; combination a felony

Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 3, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708.)

Amendments

1974—Pub. L. 93-528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

1955—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand".

Cross References

Antitrust laws inapplicable to labor organizations, see section 17 of this title.

Carriers relieved from operation of this chapter, see section 11341 of Title 49, Transportation.

Combinations in restraint of import trade, see section 8 of this title.

Conspiracy to commit offense or to defraud United States, see section 371 of Title 18, Crimes and Criminal Procedure.

Discrimination in price, services or facilities, see section 13 of this title.

§ 4. Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(July 2, 1890, ch. 647, § 4, 26 Stat. 209; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

CODIFICATION

Act Mar. 3, 1911, vested jurisdiction in "district" courts, instead of "circuit" courts.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Commencement of action by filing a complaint with the court, see rule 3, Title 28, Appendix, Judiciary and Judicial Procedure.

Continuation of section under rule 65, see note by Advisory Committee under rule 65.

Injunctions, see rule 65.

One form of action, see rule 2.

Pleadings allowed, see rule 7.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

CROSS REFERENCES

Issuance of injunctions in labor disputes, see sections 52 and 107 of Title 29, Labor.

Restraining trusts in restraint of import trade, see section 9 of this title.

Restraining violations of Clayton Act, see sections 25 and 26 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of this title.

§ 5. Bringing in additional parties

Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

(July 2, 1890, ch. 647, § 5, 26 Stat. 210.)

FEDERAL RULES OF CIVIL PROCEDURE

Adding or dropping parties, see rule 21, Title 28, Appendix, Judiciary and Judicial Procedure.

Continuance of section under rule 4, see note by Advisory Committee under rule 4.

Process, see rule 4.

CROSS REFERENCES

Bringing in additional parties, see, also, sections 10 and 25 of this title.

§ 6. Forfeiture of property in transit

Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this title, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(July 2, 1890, ch. 647, § 6, 26 Stat. 210.)

CROSS REFERENCES

Fines, penalties, and forfeitures, see chapter 163 of Title 28, Judiciary and Judicial Procedure.

Forfeiture of property in transit, see, also, section 11 of this title.

§ 6a. Conduct involving trade or commerce with foreign nations

Sections 1 to 7 of this title shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

(2) such effect gives rise to a claim under the provisions of sections 1 to 7 of this title, other than this section.

If sections 1 to 7 of this title apply to such conduct only because of the operation of paragraph (1)(B), then sections 1 to 7 of this title shall apply to such conduct only for injury to export business in the United States.

(July 2, 1890, ch. 647, § 7, as added Oct. 8, 1982, Pub. L. 97-290, title IV, § 402, 96 Stat. 1246.)

PRIOR PROVISIONS

A prior section 7 of act July 2, 1890, ch. 647, 26 Stat. 210, which related to suits by persons injured by acts in violation of sections 1 to 7 of this title, and which was classified as a note under section 15 of this title, was repealed by act July 7, 1955, ch. 283, § 3, 69 Stat. 283.

§ 7. "Person" or "persons" defined

The word "person", or "persons", wherever used in sections 1 to 7 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(July 2, 1890, ch. 647, § 8, 26 Stat. 210.)

CROSS REFERENCES

Definition of person, see, also, section 12 of this title.

Liability of corporate directors and agents for violation of antitrust laws, see section 24 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6a of this title.

UNITED STATES OF AMERICA

B. The Clayton Act
The Statutes at Large of the United States of America
Chapter 323

An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes
(Sections 1 to 26)

The Clayton Act

§ 12. Definitions; short title

(a) "Antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(b) This Act may be cited as the "Clayton Act".

(Oct. 15, 1914, ch. 323, § 1, 38 Stat. 730; Sept. 30, 1976, Pub. L. 94-435, title III, § 305(b), 90 Stat. 1397.)

REFERENCES IN TEXT

Words "herein" and "this Act", referred to in the three paragraphs of subsec. (a), mean the Clayton Act. For classification of the Clayton Act to the Code, see last paragraph hereunder.

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, referred to in subsec. (a), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of this title.

The Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four, referred to in subsec. (a), is act Aug. 27, 1894, ch. 349, 28 Stat. 509, as amended, known as the Wilson Tariff Act. Sections seventy-three to seventy-six thereof are set out as sections 8 to 11 of this title. Section seventy-seven thereof was not classified to the Code.

The Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes'," approved February twelfth, nineteen hundred and thirteen, referred to in subsec. (a), is act Feb. 12, 1913, ch. 40, 37 Stat. 667, as amended, which is classified to sections 8 and 11 of this title.

The Clayton Act, referred to in subsec. (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. Sections 9 and 21 to 25 of the act were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948, and their provisions are now covered by sections 402, 660, 3285 and 3691 of Title 18, Crimes and Criminal Procedure, except that former section 23 of the act is obsolete and not now covered. Sections 17 to 19 of the act were repealed by act June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948, and their provisions are now covered by rule 65 of the Federal Rules of Civil Procedure, Title 28, Appendix, Judiciary and Judicial Procedure. For complete classification of this Act to the Code, see Tables.

CODIFICATION

The 3d par. of subsec. (a) is also classified to section 53 of Title 29, Labor.

AMENDMENTS

1976—Pub. L. 94-435 designated existing provisions as subsec. (a) and added subsec. (b).

CROSS REFERENCES

Federal Aviation Act of 1958, antitrust exemption under, see section 1384 of Title 49, Appendix, Transportation.

Insurance business, applicability of sections 12 to 27 to, see section 1011 et seq. of this title.

CLAYTON ACT REFERRED TO IN OTHER SECTIONS

The Clayton Act [see References in Text note above] is referred to in sections 35, 44, 1012, 1013, 3301, 3503 of this title; title 7 section 225; title 10 section 7430; title 12 sections 1828, 1849, 3208; title 16 section 2602; title 30 sections 184, 1413; title 33 sections 1331, 1502; title 40 section 488; title 42 sections 2135, 5417, 5909, 6202, 8235f, 9102; title 43 section 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 34, 1291, 1311, 4002, 4021, 4301 of this title; title 17 section 109; title 19 sections 2033, 2561; title 28 section 1407; title 46 App. section 885; title 49 sections 10706, 10708, 10934, 11110; title 49 App. sections 1301, 1384.

§ 13. Discrimination in price, services, or facilities

(a) Price; selection of customers

It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Burden of rebutting prima-facie case of discrimination

Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) Payment or acceptance of commission, brokerage, or other compensation

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) Payment for services or facilities for processing or sale

It shall be unlawful for any person engaged in commerce to pay or contact for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) Furnishing services or facilities for processing, handling, etc.

It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) Knowingly inducing or receiving discriminatory price

It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

(Oct. 15, 1914, ch. 323, § 2, 38 Stat. 730; June 19, 1936, ch. 592, § 1, 49 Stat. 1526.)

AMENDMENTS

1936—Act June 19, 1936, amended section generally.

SHORT TITLE

Act June 19, 1936, which amended this section and added sections 13a, 13b, and 21a of this title, is popularly known as the Robinson-Patman Anti-Discrimination Act and also as the Robinson-Patman Price Discrimination Act.

CROSS REFERENCES

Administrative authority to enforce compliance with this section, see section 21 of this title.

Exemption of non-profit institutions from provisions of this section, see section 13c of this title.

Power of Federal Trade Commission to prevent unfair trade practices, see section 45 of this title.

ROBINSON-PATMAN ANTI-DISCRIMINATION ACT REFERRED TO IN OTHER SECTIONS

The Robinson-Patman Anti-Discrimination Act [15 U.S.C. 13 to 13b, 21a] is referred to in sections 13b, 13c, 21a, 1013, 3301 of this title; title 10 section 7430; title 16 section 2602; title 30 sections 184, 1413; title 42 sections 5909, 6202; title 43 section 1331; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. section 2158.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 21a, 26 of this title; title 28 section 1407; title 30 section 184.

§ 13a. Discrimination in rebates, discounts, or advertising service charges; underselling in particular localities; penalties

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned not more than one year, or both.

(June 19, 1936, ch. 592, § 3, 49 Stat. 1528.)

CROSS REFERENCES

Exemption on non-profit institutions from provisions of this section, see section 13c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430; title 28 section 1407; title 30 section 184; title 42 sections 6202, 8235f; title 49 section 10706.

§ 13b. Cooperative association; return of net earnings or surplus

Nothing in this Act shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

(June 19, 1936, ch. 592, § 4, 49 Stat. 1528.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

CROSS REFERENCES

Exemptions on non-profit institutions from provisions of this section, see section 13c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430; title 28 section 1407; title 42 sections 6202, 8235f; title 49 section 10706.

§ 13c. Exemption of non-profit institutions from price discrimination provisions

Nothing in the Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.

(May 26, 1938, ch. 283, 52 Stat. 446.)

REFERENCES IN TEXT

The Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, referred to in text, is act June 19, 1936, ch. 592, 49 Stat. 1526, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

§ 14. Sale, etc., on agreement not to use goods of competitor

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(Oct. 15, 1914, ch. 323, § 3, 38 Stat. 731.)

CROSS REFERENCES

Administrative authority to enforce compliance with this section, see section 21 of this title.

Monopolizing trade, see section 2 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 26 of this title.

§ 15. Suits by persons injured

(a) Amount of recovery; prejudgment interest

Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b) Amount of damages payable to foreign states and instrumentalities of foreign states

(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) of this section an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

(2) Paragraph (1) shall not apply to a foreign state if—

(A) such foreign state would be denied, under section 1605(a)(2) of title 28, immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

(B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;

(C) such foreign state engages primarily in commercial activities; and

(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

(c) Definitions

For purposes of this section—

(1) the term "commercial activity" shall have the meaning given it in section 1603(d) of title 28, and

(2) the term "foreign state" shall have the meaning given it in section 1603(a) of title 28.

(Oct. 15, 1914, ch. 323, § 4, 38 Stat. 731; Sept. 12, 1980, Pub. L. 96-349, § 4(a)(1), 94 Stat. 1156; Dec. 29, 1982, Pub. L. 97-393, 96 Stat. 1964.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a), are defined in section 12 of this title.

CODIFICATION

Section supersedes two former similar sections enacted by act July 2, 1890, ch. 647, § 7, 26 Stat. 210, and act Aug. 27, 1894, ch. 349, § 77, 28 Stat. 570, each of which were restricted in operation to the particular act cited.

AMENDMENTS

1982—Pub. L. 97-393 designated existing provisions as subsec. (a), inserted "Except as provided in subsection (b) of this section,", and added subsecs. (b) and (c).

1980—Pub. L. 96-349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 4(b) of Pub. L. 96-349 provided that: "The amendments made by this section [amending sections 15, 15a, and 15c of this title] shall apply only with respect to actions commenced after the date of the enactment of this Act [Sept 12, 1980]."

REPEALS

Section 7 of act July 2, 1890, ch. 647, 26 Stat. 210, which was superseded by this section, was repealed by act July 7, 1955, ch. 283, § 3, 69 Stat. 283. For effective date of repeal, see note set out under section 15b of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Effect of rule 54 on this section, see note by Advisory Committee under rule 54.

CROSS REFERENCES

Jurisdiction of civil action or proceeding arising under commerce and anti-trust regulations, see section 1337 of Title 28, Judiciary and Judicial Procedure.

Limitation of action, suspension of, see note under section 16 of this title.

Venue and service of process in action against corporation, see section 22 of this title.

Venue of district courts, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 15c, 16, 35, 36, 4016, 4303, 4304 of this title; title 26 sections 162, 186; title 46 App. section 1706.

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§ 15a. Suits by United States; amount of recovery; prejudgment interest

Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover actual damages by it sustained and the cost of suit. The court may award under this section, pursuant to a motion by the United States promptly made, simple interest on actual damages for the period beginning on the date of service of the pleading of the United States setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether the United States or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(2) whether, in the course of the action involved, the United States or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings;

(3) whether the United States or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof; and

(4) whether the award of such interest is necessary to compensate the United States adequately for the injury sustained by the United States.

(Oct. 15, 1914, ch. 323, § 4A, as added July 7, 1955, ch. 283, § 1, 69 Stat. 282, and amended Sept. 12, 1980, Pub. L. 96-349, § 4(a)(2), 94 Stat. 1156.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

AMENDMENTS

1980—Pub. L. 96-349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-349 applicable only with respect to actions commenced after Sept. 12, 1980, see section 4(b) of Pub. L. 96-349, set out as a note under section 15 of this title.

EFFECTIVE DATE

Section effective six months after July 7, 1955, see note set out under section 15b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 16, 35, 36 of this title; title 28 section 1407.

§ 15b. Limitation of actions

Any action to enforce any cause of action under sections 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

(Oct. 15, 1914, ch. 323, § 4B, as added July 7, 1955, ch. 283, § 1, 69 Stat. 283, and amended Sept. 30, 1976, Pub. L. 94-435, title III, § 302(1), 90 Stat. 1396.)

REFERENCES IN TEXT

The effective date of this Act, referred to in text, probably refers to the effective date of act July 7, 1955, ch. 283, 69 Stat. 282, which was six months after July 7, 1955.

This Act, referred to in text, probably refers to act July 7, 1955.

AMENDMENTS

1976—Pub. L. 94-435 substituted "sections 15, 15a, or 15c" for "sections 15 or 15a".

EFFECTIVE DATE

Section 4 of act July 7, 1955, provided: "This Act [enacting sections 15a and 15b of this title and amending section 16 of this title] shall take effect six months after its enactment [July 7, 1955]."

§ 15c. Actions by State attorneys general

(a) Parens patriae; monetary relief; damages; prejudgment interest

(1) Any attorney general of a State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, to secure monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of any violation of sections 1 to 7 of this title. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which is improperly allocable to (i) natural persons who have excluded their claims pursuant to subsection (b)(2) of this section, and (ii) any business entity.

(2) The court shall award the State as monetary relief threefold the total damage sustained as described in paragraph (1) of this subsection, and the cost of suit, including a reasonable attorney's fee. The court may award under this paragraph, pursuant to a motion by such State promptly made, simple interest on the total damage for the period beginning on the date of service of such State's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this paragraph for any period is just in the circumstances, the court shall consider only—

(A) whether such State or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(B) whether, in the course of the action involved, such State or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or other wise providing for expeditious preceedings; and

(C) whether such State or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b) Notice; exclusion election; final judgment

(1) In any action brought under subsection (a)(1) of this section, the State attorney general shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(2) Any person on whose behalf an action is brought under subsection (a)(1) of this section may elect to exclude from adjudication the portion of the State claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

(3) The final judgment in an action under subsection (a)(1) of this section shall be res judicata as to any claim under section 15 of this title by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

(c) Dismissal or compromise of action

An action under subsection (a)(1) of this section shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

(d) Attorneys' fees

In any action under subsection (a) of this section—

(1) the amount of the plaintiffs' attorney's fee, if any, shall be determined by the court; and

(2) the court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding that the State attorney general has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

(Oct. 15, 1914, ch. 323, § 4C, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1394, and amended Sept. 12, 1980, Pub. L. 96-349, § 4(a)(3), 94 Stat. 1157.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a)(2), are defined in section 12 of this title.

AMENDMENTS

1980—Subsec. (a)(2). Pub. L. 96-349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-349 applicable only with respect to actions commenced after Sept. 12, 1980, see section 4(b) of Pub. L. 96-349, set out as a note under section 15 of this title.

EFFECTIVE DATE

Section 304 of Pub. L. 94-435 provided that: "The amendments to the Clayton Act [sections 12, 13, 14 to 19, 20, 21, 22 to 27 of this title and sections 52 and 53 of Title 29, Labor] made by section 301 of this Act [enacting sections 15c to 15h of this title] shall not apply to any injury sustained prior to the date of enactment of this Act [Sept. 30, 1976]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 15d, 15e, 15g, 15h, 16, 35, 36, 4303 of this title; title 28 section 1407; title 42 section 11111.

§ 15d. Measurement of damages

In any action under section 15c(a)(1) of this title, in which there has been a determination that a defendant agreed to fix prices in violation of sections 1 to 7 of this title, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

(Oct. 15, 1914, ch. 323, § 4D, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1395.)

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15g, 15h of this title.

§ 15e. Distribution of damages

Monetary relief recovered in an action under section 15c(a)(1) of this title shall—

(1) be distributed in such manner as the district court in its discretion may authorize; or

(2) be deemed a civil penalty by the court and deposited with the State as general revenues;

subject in either case to the requirement that any distribution procedure adopted afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

(Oct. 15, 1914, ch. 323, § 4E, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1395.)

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15g, 15h of this title.

§ 15f. Actions by Attorney General

(a) Notification to State attorney general

Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.

(b) Availability of files and other materials

To assist a State attorney general in evaluating the notice or in bringing any action under this Act, the Attorney General of the United States shall, upon request by such State attorney general, make available to him, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

(Oct. 15, 1914, ch. 323, § 4F, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1395.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a), are defined in section 12 of this title.

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15g, 15h of this title.

§ 15g. Definitions

For the purposes of sections 15c, 15d, 15e, and 15f of this title:

(1) The term "State attorney general" means the chief legal officer of a State, or any other person authorized by State law to bring actions under section 15c of this title, and includes the Corporation Counsel of the District of Columbia, except that such term does not include any person employed or retained on—

(A) a contingency fee based on a percentage of the monetary relief awarded under this section; or

(B) any other contingency fee basis, unless the amount of the award of a reasonable attorney's fee to a prevailing plaintiff is determined by the court under section 15c(d)(1) of this title.

(2) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(3) The term "natural persons" does not include proprietorships or partnerships.

(Oct. 15, 1914, ch. 323, § 4G, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1396.)

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15h, 34, 4301 of this title.

§ 15h. Applicability of parens patriae actions

Sections 15c, 15d, 15e, 15f, and 15g of this title shall apply in any State, unless such State provides by law for its nonapplicability in such State.

(Oct. 15, 1914, ch. 323, § 4H, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1396.)

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

§ 16. Judgments

(a) Prima facie evidence; collateral estoppel

A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken. Nothing contained in this section shall be construed to impose any limitation on the application of collateral estoppel, except that, in any action or proceeding brought under the antitrust laws, collateral estoppel effect shall not be given to any finding made by the Federal Trade Commission under the antitrust laws or under section 45 of this title which could give rise to a claim for relief under the antitrust laws.

(b) Consent judgments and competitive impact statements; publication in Federal Register; availability of copies to the public

Any proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be

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filed with the district court before which such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive impact statement which shall recite—

(1) the nature and purpose of the proceeding;

(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

(5) a description of the procedures available for modification of such proposal; and

(6) a description and evaluation of alternatives to such proposal actually considered by the United States.

(c) Publication of summaries in newspapers

The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct—

(i) a summary of the terms of the proposal for consent judgment,

(ii) a summary of the competitive impact statement filed under subsection (b) of this section,

(iii) and a list of the materials and documents under subsection (b) of this section which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.

(d) Consideration of public comments by Attorney General and publication of response

During the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposal for the consent judgment submitted under subsection (b) of this section. The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

(e) Public interest determination

Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

(f) Procedure for public interest determination

In making its determination under subsection (e) of this section, the court may—

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

(2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect of such judgment, in such manner as the court deems appropriate;

(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

(4) review any comments including any objections filed with the United States under subsection (d) of this section concerning the proposed judgment and the responses of the United States to such comments and objections; and

(5) take such other action in the public interest as the court may deem appropriate.

(g) Filing of written or oral communications with the district court

Not later than 10 days following the date of the filing of any proposal for a consent judgment under subsection (b) of this section, each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this subsection have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

(h) Inadmissibility as evidence of proceedings before the district court and the competitive impact statement

Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 15a of this title nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.

(i) Suspension of limitations

Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect to every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however*, That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 or 15c of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

(Oct. 15, 1914, ch. 323, § 5, 38 Stat. 731; July 7, 1955, ch. 283, § 2, 69 Stat. 283; Dec. 21, 1974, Pub. L. 93-528, § 2, 88 Stat. 1706; Sept. 30, 1976, Pub. L. 94-435, title III, § 302(2), 90 Stat. 1396; Sept. 12, 1980, Pub. L. 96-349, § 5(a), 94 Stat. 1157.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (a), (b), and (g) to (i), are defined in section 12 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-349 made collateral estoppel inapplicable in any action or proceeding brought under the antitrust laws to any finding made by the Commission under the antitrust laws or under section 45 of this title which could give rise to a claim for relief under the antitrust laws; struck out "or by the United States under section 15a of this title," after "under said laws"; and deleted from proviso "or to judgments or decrees entered in actions under section 15a of this title" after "testimony has been taken".

1976—Pub. L. 94-435 substituted "private or State right of action" for "private right of action" and "section 15 or 15c" for "section 15".

1974—Subsecs. (b) to (i). Pub. L. 93-528 added subsecs. (b) to (h) and redesignated former subsec. (b) as (i).

1955—Act July 7, 1955, substituted subsec. (a) for first paragraph, to provide that final judgments in actions under the antitrust laws by the United States shall be prima facie evidence in damage suits by the United States as well as in private damage suits, and substituted subsec. (b) for second paragraph, to provide for a one-year suspension of limitations.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(b) of Pub. L. 96-349 provided that: "The amendments made by this section [amending this section] shall apply only with respect to actions commenced after the date of the enactment of this Act [Sept. 12, 1980]."

SUSPENSION OF LIMITATION

Act Oct. 10, 1942, ch. 589, 56 Stat. 781, as amended June 30, 1945, ch. 213, 59 Stat. 306, provided for the suspension of any existing statutes of limitations relating to violations of antitrust laws now indictable or subject to civil proceedings under any existing statutes, until June 30, 1946.

FEDERAL RULES OF APPELLATE PROCEDURE

Stay or injunction pending appeal, see rule 8, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Judgment, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

One form of action, see rule 2.

Rules of governing the procedure in all suits of a civil nature cognizable as cases at law or in equity, see rule 1.

FEDERAL RULES OF CRIMINAL PROCEDURE

Sentence and judgment, see rule 32, Title 18, Appendix, Crimes and Criminal Procedure.

Verdict, see rule 31.

§ 17. Antitrust laws not applicable to labor organizations

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

(Oct. 15, 1914, ch. 323, § 6, 38 Stat. 731.)

References in Text

The antitrust laws, referred to in text, are defined in section 12 of this title.

Cross References

Jurisdiction to restrain violations of restrictions on payments to employee representatives without regard to section, see section 186 of Title 29, Labor.

Restriction of injunctive relief in labor actions, see sections 52 and 107 of Title 29.

Section Referred to in Other Sections

This section is referred to in title 18 section 1951; title 29 section 186; title 47 section 606.

§ 18. Acquisition by one corporation of stock of another

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission or Secretary.

(Oct. 15, 1914, ch. 323, § 7, 38 Stat. 731; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Sept. 12, 1980, Pub. L. 96-349, § 6(a), 94 Stat. 1157; Oct. 4, 1984, Pub. L. 98-443, § 9(*l*), 98 Stat. 1708.)

Amendments

1984—Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board" and "Commission or Secretary" for "Commission, Secretary, or Board" in sixth par.

1980—Pub. L. 96-349, substituted "person" for "corporation" wherever appearing in first and second pars.; substituted "persons" for "corporations" in second par. and first sentence of third par.; and inserted "or in any activity affecting commerce" after "commerce" wherever appearing in first, second, and third pars.

1950—Act Dec. 29, 1950, amended section generally so as to prohibit the acquisition of the whole or any part of the assets of another corporation when the effect of the acquisition may substantially lessen competition or tend to create a monopoly.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

Effective Date of 1980 Amendment

Section 6(b) of Pub. L. 96-349 provided that: "The amendments made by this section [amending this section] shall apply only with respect to acquisitions made after the date of the enactment of this Act [Sept. 12, 1980]."

Transfer of Functions

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal

Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by Reorg. Plan No. 6 of 1949, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1069, set out in the Appendix to Title 5, Government Organization and Employees. See, also, notes set out under section 1111 of Title 46, Appendix, Shipping.

The United States Maritime Commission was abolished by Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, which transferred part of its functions and part of the functions of its Chairman, to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the Chairman of the Federal Maritime Board should, ex officio, be such Administrator.

Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by sections 103 and 202 of Reorg. Plan No. 7 of 1961.

The Maritime Administration of the Department of Commerce was transferred to the Department of Transportation, and all related functions of the Secretary and other officers and offices of the Department of Commerce were transferred to the Department of Transportation and vested in the Secretary of Transportation, see section 1601 et seq. of Title 46, Appendix, Shipping.

CROSS REFERENCES

Acquisition of stock of export trade corporation, see section 63 of this title.

Administrative authority to enforce compliance with this section, see section 21 of this title.

Divestment of stock held contrary to the provisions of this section, see section 21 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18a, 21, 26, 63 of this title.

§ 18a. Premerger notification and waiting period

(a) Filing

Except as exempted pursuant to subsection (c) of this section, no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) of this section and the waiting period described in subsection (b)(1) of this section has expired, if—

(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce;

(2)(A) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more;

(B) any voting securities or assets of a person not engaged in manufacturing which has total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more; or

(C) any voting securities or assets of a person with annual net sales or total assets of $100,000,000 or more are being acquired by any person with total assets or annual net sales of $10,000,000 or more; and

(3) as a result of such acquisition, the acquiring person would hold—

(A) 15 per centum or more of the voting securities or assets of the acquired person, or

(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of $15,000,000.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d) of this section.

(b) Waiting period; publication; voting securities

(1) The waiting period required under subsection (a) of this section shall—

(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the "Assistant Attorney General") of—

(i) the completed notification required under subsection (a) of this section, or

(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2) of this section.

(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

(3) As used in this section—

(A) The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

(c) Exempt transactions

The following classes of transactions are exempt from the requirements of this section—

(1) acquisitions of goods or realty transferred in the ordinary course of business;

(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;

(4) transfers to or from a Federal agency or a State or political subdivision thereof;

(5) transactions specifically exempted from the antitrust laws by Federal statute;

(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

(7) transactions which require agency approval under section 1828(c) of title 12, or section 1842 of title 12;

(8) transactions which require agency approval under section 1843 of title 12, section 1726 or 1730a(e) of title 12, or section 1464 of title 12, if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction;

(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;

(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B) of this section.

(d) Commission rules

The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, consistent with the purposes of this section—

(1) shall require that the notification required under subsection (a) of this section be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and

(2) may—

(A) define the terms used in this section;

(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

(e) Additional information; waiting period extensions

(1) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section for an additional period of not more than 20 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2) of this section.

(f) Preliminary injunctions; hearings

If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 18 of this title, or section 45 of this title, or an action is filed by the United States, alleging that a proposed acquisition violates such section 18 of this title, or section 1 or 2 of this title, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.

(g) Civil penalty; compliance; power of court

(1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) of this section or any request for the submission of additional information or documentary material under subsection (e)(1) of this section within the waiting period specified in subsection (b)(1) of this section and as may be extended under subsection (e)(2) of this section, the United States district court—

(A) may order compliance;

(B) shall extend the waiting period specified in subsection (b)(1) of this section and as may have been extended under subsection (e)(2) of this section until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate,

upon application of the Federal Trade Commission or the Assistant Attorney General.

(h) Disclosure exemption

Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(i) Construction with other laws

(1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act [15 U.S.C. 1311 et seq.], the Federal Trade Commission Act [15 U.S.C. 41 et seq.], or any other provision of law.

(j) Report to Congress; legislative recommendations

Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to the Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.

(Oct. 15, 1914, ch. 323, § 7A, as added Sept. 30, 1976, Pub. L. 94-435, title II, § 201, 90 Stat. 1390, and amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(10)(A), 98 Stat. 3358.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (c), (d), are defined in section 12 of this title.

This Act, referred to in subsec. (i)(1), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (i)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Antitrust Civil Process Act, referred to in subsec. (i)(2), is Pub. L. 87-664, Sept. 19, 1962, 76 Stat. 548, as amended, which is classified generally to chapter 34 (§ 1311 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of this title and Tables.

AMENDMENTS

1984—Subsec. (f)(2). Pub. L. 98-620 struck out designation "(A)" before "upon the filing", and struck out subpar. (B) which had provided that if the Federal Trade Commission or the Assistant Attorney General certified that he or it believed that the public interest required relief pendente lite pursuant to this subsection, the motion for a preliminary injunction had to be set down for hearing by the district judge so designated at the earliest practicable time, would take precedence over all matters except older matters of the same character and trials pursuant to section 3161 of title 18, and had to be in every way expedited.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section 202 of Pub. L. 94-435 provided that: "The amendment made by section 201 of this Act [enacting this section] shall take effect 150 days after the date of enactment of this Act [Sept. 30, 1976], except that subsection (d) of section 7A of the Clayton Act [subsec. (d) of this section] (as added by section 201 of this Act) shall take effect on the date of enactment of this Act [Sept. 30, 1976]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 11 section 363.

§ 19. Interlocking directorates and officers

No private banker or director, officer, or employee of any member bank of the Federal Reserve System or any branch thereof shall be at the same time a director, officer, or employee of any other bank, banking association, savings bank, or trust company organized under the National Bank Act [12 U.S.C. 21 et seq.] or organized under the laws of any State or of the District of Columbia, or any branch thereof, except that the Board of Governors of the Federal Reserve System may by regulation permit such service as a director, officer, or employee of not more than one other such institution or branch thereof; but the foregoing prohibition shall not apply in the case of any one or more of the following or any branch thereof:

(1) A bank, banking association, savings bank, or trust company, more than 90 per centum of the stock of which is owned directly or indirectly by the United States or by any corporation of which the United States directly or indirectly owns more than 90 per centum of the stock.

(2) A bank, banking association, savings bank, or trust company which has been placed formally in liquidation or which is in the hands of a receiver, conservator, or other official exercising similar functions.

(3) A corporation, principally engaged in international or foreign banking or banking in a dependency or insular possession of the United States which has entered into an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 of the Federal Reserve Act, as amended [12 U.S.C. 601 et seq.].

(4) A bank, banking association, savings bank, or trust company, more than 50 per centum of the common stock of which is owned directly or indirectly by persons who own directly or indirectly more than 50 per centum of the common stock of such member bank.

(5) A bank, banking association, savings bank, or trust company not located and having no branch in the same city, town, or village as that in which such member bank or any branch thereof is located, or in any city, town, or village contiguous or adjacent thereto.

(6) A bank, banking association, savings bank, or trust company not engaged in a class or classes of business in which such member bank is engaged.

(7) A mutual savings bank having no capital stock.

Until February 1, 1939, nothing in this section shall prohibit any director, officer, or employee of any member bank of the Federal Reserve System, or any branch thereof, who is lawfully serving at the same time as a private banker or as a director, officer, or employee of any other bank, banking association, savings bank, or trust company, or any branch thereof, on August 23, 1935, from continuing such service.

The Board of Governors of the Federal Reserve System is authorized and directed to enforce compliance with this section, and to prescribe such rules and regulations as it deems necessary for that purpose.

No person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to subtitle IV of title 49, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of this election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

(Oct. 15, 1914, ch. 323, § 8, 38 Stat. 732; May 15, 1916, ch. 120, 39 Stat. 121; May 26, 1920, ch. 206, 41 Stat. 626; Mar. 9, 1928, ch. 165, 45 Stat. 253; Mar. 2, 1929, ch. 581, 45 Stat. 1536; Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717.)

REFERENCES IN TEXT

The National Bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified generally to chapter 2 (§ 21 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see References in Text note set out under section 38 of Title 12.

Section 25 of the Federal Reserve Act, as amended, referred to in subpar. (3), is classified to subchapter I [§ 601 et seq.] of chapter 6 of Title 12.

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

CODIFICATION

"Subtitle IV of title 49," was substituted in text for "the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven," on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat.

1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1935—Act Aug. 23, 1935, amended section generally.
1929—Act Mar. 2, 1929, amended second par.
1928—Act Mar. 9, 1928, amended second par.

CROSS REFERENCES

Administrative authority to enforce compliance with this section, see section 21 of this title.

Atomic energy licenses, antitrust provisions governing, see section 2135 of Title 42, The Public Health and Welfare.

Injunctive relief for private parties, see section 26 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 26 of this title; title 12 section 3205.

§ 19a. Repealed. Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717

Section, act Oct. 15, 1914, ch. 323, § 8a, as added June 16, 1933, ch. 89, § 33, 48 Stat. 194, related to interlocking corporations or partnerships making loans on securities.

§ 20. Purchases by common carriers in case of interlocking directorates, etc.

No common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors, and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding, or shall do any act to prevent free and fair competition among the bidders or those desiring to bid, shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall, within thirty days after making the same, file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions, it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

If any common carrier shall violate this section, it shall be fined not exceeding $25,000; and every such director, agent, manager, or officer thereof who shall have knowingly voted for or directed the act constituting such violation, or who shall have aided or abetted in such violation, shall be deemed guilty of a misdemeanor and shall be fined not exceeding $5,000 or confined in jail not exceeding one year, or both, in the discretion of the court.

(Oct. 15, 1914, ch. 323, § 10, 38 Stat. 734.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 section 581.

§ 21. Enforcement provisions

(a) Commission, Board, or Secretary authorized to enforce compliance

Authority to enforce compliance with sections 13, 14, 18, and 19 of this title by the persons respectively subject thereto is vested in the Interstate Commerce Commission where applicable to common carriers subject to subtitle IV of title 49; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]; in the Board of Governors of the Federal Reserve System where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

(b) Issuance of complaints for violations; hearing; intervention; filing of testimony; report; cease and desist orders; reopening and alteration of reports or orders

Whenever the Commission, Board, or Secretary vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 13, 14, 18, and 19 of this title, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission, Board, or Secretary requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the

Commission, Board, or Secretary, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission, Board, or Secretary. If upon such hearing the Commission, Board, or Secretary, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 18 and 19 of this title, if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission, Board, or Secretary may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission, Board, or Secretary may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission, Board, or Secretary conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Review of orders; jurisdiction; filing of petition and record of proceeding; conclusiveness of findings; additional evidence; modification of findings; finality of judgment and decree

Any person required by such order of the commission, board, or Secretary to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the commission, board, or Secretary be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission, board, or Secretary, and thereupon the commission, board, or Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the commission, board, or Secretary until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the commission, board, or Secretary, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commission, board, or Secretary as to the facts, if supported by substantial evidence, shall be conclusive. To the extent that the order of the commission, board, or Secretary is affirmed, the court shall issue its own order commanding obedience to the terms of such order of the commission, board, or Secretary. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, board, or Secretary, the court may order such additional evidence to be taken before the commission, board, or Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission, board, or Secretary may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Exclusive jurisdiction of Court of Appeals

Upon the filing of the record with its jurisdiction of the court of appeals to affirm, enforce, modify, or set aside orders of the commission, board, or Secretary shall be exclusive.

(e) Liability under antitrust laws

No order of the commission, board, or Secretary or judgment of the court to enforce the same shall in anywise relieve or absolve any person from any liability under the antitrust laws.

(f) Service of complaints, orders and other processes

Complaints, orders, and other processes of the commission, board, or Secretary under this section may be serviced by anyone duly authorized by the commission, board, or Secretary, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (2) by leaving a copy thereof at the residence or the principal office or place of business of such person; or (3) by mailing by registered or certified mail a copy thereof addressed to such person at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered or certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of orders generally

Any order issued under subsection (b) of this section shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the commission, board, or Secretary may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b) of this section; or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed, or the petition for review has been dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed or the petition for review has been dismissed by the court of appeals; or

(4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the commission, board, or Secretary be affirmed or the petition for review be dismissed.

(h) Finality of orders modified by Supreme Court

If the Supreme Court directs that the order of the commission, board, or Secretary be modified or set aside, the order of the commission, board, or Secretary rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(i) Finality of orders modified by Court of Appeals

If the order of the commission, board, or Secretary is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court then the order of the commission, board, or Secretary rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the commission, board, or Secretary was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(j) Finality of orders issued on rehearing ordered by Court of Appeals or Supreme Court

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the commission, board, or Secretary for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission, board, or Secretary rendered upon such rehearing shall become final in the same manner as though no prior order of the commission, board, or Secretary had been rendered.

(k) "Mandate" defined

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(*l*) Penalties

Any person who violates any order issued by the commission, board, or Secretary under subsection (b) of this section after such order has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of any such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the commission, board, or Secretary each day of continuance of such failure or neglect shall be deemed a separate offense.

(Oct. 15, 1914, ch. 323, § 11, 38 Stat. 734; June 19, 1934, ch. 652, title VII, § 702(d), formerly title VI, § 602(d), 48 Stat. 1102, renumbered Oct. 30, 1984, Pub. L. 98-549, § 6(a), 98 Stat. 2804; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; June 23, 1938, ch. 601, § 1107(g), 52 Stat. 1028; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1401(b), 72 Stat. 806; Aug. 28, 1958, Pub. L. 85-791, § 4, 72 Stat. 943; July 23, 1959, Pub. L. 86-107, § 1, 73 Stat. 243; Oct. 4, 1984, Pub. L. 98-443, § 9(m), 98 Stat. 1708; Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(10)(B), 98 Stat. 3358.)

REFERENCES IN TEXT

The Federal Aviation Act of 1958, referred to in subsec. (a), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, as amended, which is classified principally to chapter 20 (§ 1301 et seq.) of Title 49, Appendix, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49, Appendix, and Tables.

The antitrust laws, referred to in subsec. (e), are defined in section 12 of this title.

CODIFICATION

"Subtitle IV of title 49" was substituted in subsec. (a) for "the Interstate Commerce Act, as amended" on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

Amendments

1984—Subsec. (a). Pub. L. 98-443, § 9(m)(1), substituted "Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958" for "Civil Aeronautics Board where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938".

Subsec. (b). Pub. L. 98-443, § 9(m)(2), substituted "Commission, Board, or Secretary" for "Commission or Board" wherever appearing.

Subsecs. (c), (d). Pub. L. 98-443, § 9(m)(3), substituted "commission, board, or Secretary" for "commission or board" wherever appearing.

Subsec. (e). Pub. L. 98-620 struck out provision that such proceedings in the court of appeals had to be given precedence over other cases pending therein, and had to be in every way expedited.

Pub. L. 98-443, § 9(m)(3), substituted "commission, board, or Secretary" for "commission or board".

Subsecs. (f) to (j), (*l*). Pub. L. 98-443, § 9(m)(3), substituted "commission, board, or Secretary" for "commission or board" wherever appearing.

1959—Pub. L. 86-107 amended section generally, and among other changes, authorized the Commission or Board, upon notice and opportunity for hearing, in cases where a petition for review has not been filed within the time allowed, to reopen and alter, modify, or set aside, in whole or in part, any report or order, whenever conditions of fact or law have so changed as to require such action or if the public interest so requires, and added subsecs. (g) to (k), providing for finality of orders, and subsec. (*l*), prescribing the civil penalty for violation of orders.

1958—Pub. L. 85-791, § 4(a), struck out "a transcript of" after "Until" in last sentence of second par.

Pub. L. 85-791, § 4(b), substituted in first sentence of third par., "file the record in the proceeding, as provided in section 2112 of title 28" for "certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission or Board", and in second sentence of third par., struck out "and transcript" after "application", inserted "concurrently with the Commission or Board until the filing of the record", and struck out "upon the pleadings, testimony, and proceedings set forth in such transcript" after "make and enter".

Pub. L. 85-791, § 4(c), substituted in second sentence of fourth par., "transmitted by the clerk of the court to" for "served upon" and "shall file in the court the record in the proceeding, as provided in section 2112 of title 28" for "forthwith shall certify and file in the court a transcript of the record in the proceeding, as hereinbefore provided", and in third sentence of fourth paragraph substituted "such petition" for "the transcript" and inserted "determined as provided in section 1009(e) of title 5,".

Pub. L. 85-791, § 4(d), substituted in fifth par., "Upon the filing of the record with it the" for "The".

1950—Act Dec. 29, 1950, amended section generally to allow the Attorney General to intervene and appear in any proceeding brought by any Commission or Board to enforce sections 13, 14, 18, and 19 of this title, but the amendment in nowise affects the jurisdiction of the Department of Justice to enforce these sections in the courts.

1938—Act June 23, 1938, inserted "in the Civil Aeronautics Authority where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938", and "authority" after "commission" wherever appearing.

1935—Act Aug. 23, 1935, changed the name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

1934—Act June 19, 1934, amended first par.

Change of Name

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

Effective Date of 1959 Amendment

Section 2 of Pub. L. 86-107 provided that: "The amendments made by section 1 [to this section] shall have no application to any proceeding initiated before the date of enactment of this Act [July 23, 1959] under the third or fourth paragraph of section 11 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (38 Stat. 734, as amended; 15 U.S.C. 21) [this section]. Each such proceeding shall be governed by the provisions of such section as they existed on the day preceding the date of enactment of this Act [July 23, 1959]."

Transfer of Functions

All functions, powers, and duties of the Civil Aeronautics Board under this section were transferred to the Secretary of Transportation by section 1553(a)(4) of Title 49, Appendix, Transportation, effective Jan. 1, 1985.

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

Cross References

Jurisdiction and powers of Federal Trade Commission, see sections 45 and 46 of this title.

Section Referred to in Other Sections

This section is referred to in section 21a of this title; title 49 App. section 1553.

§ 21a. Actions and proceedings pending prior to June 19, 1936; additional and continuing violations

Nothing herein contained shall affect rights of action arising, or litigation pending, or orders of the Federal Trade Commission issued and in effect or pending on review, based on section 13 of this title, prior to June 19, 1936: *Provided*, That where, prior to June 19, 1936, the Federal Trade Commission has issued an order requiring any person to cease and desist from a violation of section 13 of this title, and such order is pending on review or is in effect, either as issued or as affirmed or modified by a court of competent jurisdiction, and the Commission shall have reason to believe that such person has committed, used or carried on, since June 19, 1936, or is committing, using or carrying on, any act, practice or method in violation of any of the provisions of said section 13 of this title, it may reopen such original proceedings and may issue and serve upon such person its complaint, supplementary to the original complaint, stating its charges in that respect. Thereupon the same proceedings shall be had upon such supplementary complaint as provided in section 21 of this title. If upon such hearing the Commission shall be of the opinion that any act, practice, or method charged in said supplementary complaint has been committed, used, or carried on since June 19, 1936, or is being committed, used or carried on, in violation of said section 13 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and serve upon such person its order modifying or amending its original order to include any additional violations of law so found. Thereafter the provisions of section 21 of this title, as to review and enforcement of orders of the Commission shall in all things apply to such modified or amended order. If upon review as provided in said section 21 of this title the court shall set aside such modified or amended order, the original order shall not be affected thereby, but it shall be and remain in force and effect as fully and to the same extent as if such supplementary proceedings had not been taken.

(June 19, 1936, ch. 592, § 2, 49 Stat. 1527.)

References in Text

Nothing herein contained, referred to in text, probably means nothing contained in act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

Transfer of Functions

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

Cross References

Exemptions of non-profit institutions from provisions of this section, see section 13c of this title.

Section Referred to in Other Sections

This section is referred to in title 10 section 7430; title 42 sections 6202, 8235f; title 49 section 10706.

§ 22. District in which to sue corporation

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

(Oct. 15, 1914, ch. 323, § 12, 38 Stat. 736.)

References in Text

The antitrust laws, referred to in text, are defined in section 12 of this title.

Federal Rules of Appellate Procedure

Rules not to be construed as extending or limiting jurisdiction of Court of Appeals, see rule 1, Title 28, Appendix, Judiciary and Judicial Procedure.

Federal Rules of Civil Procedure

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

Process, see rule 4.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

Cross References

Venue—

Generally, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

Damage actions, see section 15 of this title.

§ 23. Suits by United States; subpoenas for witnesses

In any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

(Oct. 15, 1914, ch. 323, § 13, 38 Stat. 736.)

References in Text

The antitrust laws, referred to in text, are defined in section 12 of this title.

Federal Rules of Civil Procedure

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

Subpoena, see rule 45.

Federal Rules of Criminal Procedure

Subpoena, see rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

§ 24. Liability of directors and agents of corporation

Whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

(Oct. 15, 1914, ch. 323, § 14, 38 Stat. 736.)

References in Text

The antitrust laws, referred to in text, are defined in section 12 of this title.

§ 25. Restraining violations; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

(Oct. 15, 1914, ch. 323, § 15, 38 Stat. 736; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF APPELLATE PROCEDURE

Stay or injunction pending appeal, see rule 8, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Modification of section by rule 4, see note by Advisory Committee under rule 4, Title 28, Appendix, Judiciary and Judicial Procedure.

One form of action, see rule 2.

Process and injunctions, see rules 4 and 65.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

CROSS REFERENCES

Restraining violations of trusts in restraint of import trade, see section 9 of this title.

Restraining violations of unlawful combinations and monopolies, see section 4 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4016 of this title.

§ 26. Injunctive relief for private parties; exception; costs

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of subtitle IV of title 49, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

(Oct. 15, 1914, ch. 323, § 16, 38 Stat. 737; Sept. 30, 1976, Pub. L. 94-435, title III, § 302(3), 90 Stat. 1396.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

CODIFICATION

"Subtitle IV of title 49," was substituted in text for "the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven" on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1976—Pub. L. 94-435 inserted provision authorizing court to award costs, including attorneys' fees, to a successful plaintiff.

FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under rule 65, see note by Advisory Committee under rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

Injunctions, see rule 65.

One form of action, see rule 2.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at common law or in equity, see rule 1.

CROSS REFERENCES

Labor disputes, restriction of injunctive relief, see sections 52 and 107 of Title 29, Labor.

Venue of—
  Damage actions, see section 15 of this title.
  Proceedings against corporations, see section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4016, 4304 of this title; title 46 App. section 1706.

§ 26a. Restrictions on the purchase of gasohol and synthetic motor fuel

(a) Limitations on the use of credit instruments; sales, resales, and transfers

Except as provided in subsection (b) of this section, it shall be unlawful for any person engaged in commerce, in the course of such commerce, directly or indirectly to impose any condition, restriction, agreement, or understanding that—

(1) limits the use of credit instruments in any transaction concerning the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which there is no similar limitation on trans-

actions concerning such person's conventional motor fuel; or

(2) otherwise unreasonably discriminates against or unreasonably limits the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which such synthetic or conventional motor fuel is sold for use, consumption, or resale within the United States.

(b) Credit fees; equivalent conventional motor fuel sales; labeling of pumps; product liability disclaimers; advertising support; furnishing facilities

(1) Nothing in this section or in any other provision of law in effect on December 2, 1980, which is specifically applicable to the sale of petroleum products shall preclude any person referred to in subsection (a) of this section from imposing a reasonable fee for credit on the sale, resale, or transfer of the gasohol or other synthetic motor fuel referred to in subsection (a) of this section if such fee equals no more than the actual costs to such person of extending that credit.

(2) The prohibitions in this section shall not apply to any person who makes available sufficient supplies of gasohol and other synthetic motor fuels of equivalent usability to satisfy his customers' needs for such products, if the gasohol and other synthetic fuels are made available on terms and conditions which are equivalent to the terms and conditions on which such person's conventional motor fuel products are made available.

(3) Nothing in this section shall—

(A) preclude any person referred to in subsection (a) of this section from requiring reasonable labeling of pumps dispensing the gasohol or other synthetic motor fuel referred to in subsection (a) of this section to indicate, as appropriate, that such gasohol or other synthetic motor fuel is not manufactured, distributed, or sold by such person;

(B) preclude such person from issuing appropriate disclaimers of product liability for damage resulting from use of the gasohol or other synthetic motor fuel;

(C) require such person to provide advertising support for the gasohol or other synthetic motor fuel; or

(D) require such person to furnish or provide, at such person's own expense, any additional pumps, tanks, or other related facilities required for the sale of the gasohol or other synthetic motor fuel.

(c) "United States" defined

As used in this section, "United States" includes the several States, the District of Columbia, any territory of the United States, and any insular possession or other place under the jurisdiction of the United States.

(Oct. 15, 1914, ch. 323, § 26, as added Dec. 2, 1980, Pub. L. 96-493, § 2, 94 Stat. 2568.)

SHORT TITLE

For short title of Pub. L. 96-493 as the "Gasohol Competition Act of 1980", see section 1 of Pub. L. 96-493, set out as a Short Title of 1980 Amendment note under section 1 of this title.

§ 27. Effect of partial invalidity

If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Oct. 15, 1914, ch. 323, § 27, formerly § 26, 38 Stat. 740, renumbered Dec. 2, 1980, Pub. L. 96-493, § 2, 94 Stat. 2568.)

REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

UNITED STATES OF AMERICA

C. Federal Trade Commission Act
The Statutes at Large of the United States of America
Chapter 311

An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes (sections 1 to 11)

The Federal Trade Commission Act

SUBCHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 18a, 64, 65, 68, 68a, 68c, 68d, 68e, 68f, 68g, 69, 69[illegible], 69d, 69f, 69g, 69h, 70a, 70c, 70d, 70e, 70f, 70g, 70h, 638, 640, 1012, 1013, 1172, 1191, 1192, 1194, 1195, 1197, 1291, 1460, 1607, 1681s, 1691c, 1692*l*, 1693*o*, 1802, 2006, 2079, 2101, 2103, 2106, 2311, 2821, 2823, 3301, 3503 of this title; title 10 section 7430; title 16 section 2602; title 19 section 2485; title 21 section 378; title 30 sections 184, 1413; title 33 section 1502; title 40 section 488; title 42 sections 2135, 5417, 5909, 6202, 6294, 6315, 6325, 8235f; title 43 sections 1331, 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

§ 41. Federal Trade Commission established; membership; vacancies; seal

A commission is created and established, to be known as the Federal Trade Commission (hereinafter referred to as the Commission), which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the Commissioners shall be members of the same political party. The first Commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from September 26, 1914, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed: *Provided, however,* That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified. The President shall choose a chairman from the Commission's membership. No Commissioner shall engage in any other business, vocation, or employment. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

The Commission shall have an official seal, which shall be judicially noticed.

(Sept. 26, 1914, ch. 311, § 1, 38 Stat. 717; Mar. 21, 1938, ch. 49, § 1, 52 Stat. 111; 1950 Reorg. Plan No. 8, § 3, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265.)

AMENDMENTS

1938—Act Mar. 21, 1938, inserted proviso clause to third sentence.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Federal Trade Commission were, with certain reservations, transferred to the Chairman of such Commission by Reorg. Plan No. 8 of 1950, set out below.

The functions of the Federal Trade Commission (1) under the Flammable Fabrics Act [section 1191 et seq. of this title] and under this subchapter to the extent that such functions relate to the administration of the Flammable Fabrics Act, and (2) under the Act of August 2, 1956, [section 1211 et seq. of this title], were transferred to the Consumer Product Safety Commission by section 30 of Act Oct. 27, 1972, Pub. L. 92-573 [section 2079 of this title].

By section 3 of act Sept. 26, 1914, the former Bureau of Corporations was abolished, and all employees and functions of said Bureau transferred to the Federal Trade Commission.

REORGANIZATION PLAN NO. 8 OF 1950

Eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

FEDERAL TRADE COMMISSION

Section 1. Transfer of Functions to the Chairman

(a) Subject to the provisions of subsection (b) of this section, there are hereby transferred from the Federal Trade Commission, hereinafter referred to as the Commission, to the Chairman of the Commission, hereinafter referred to as the Chairman, the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment and supervision of personnel employed under the Commission, (2) the distribution of business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds.

(b)(1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(2) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(3) Personnel employed regularly and full time in the immediate offices of members of the Commission other than the Chairman shall not be affected by the provisions of this reorganization plan.

(4) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

Sec. 2. Performance of Transferred Functions

The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any function transferred to the Chairman by the provisions of this reorganization plan.

Sec. 3. Designation of Chairman

The functions of the Commission with respect to choosing a Chairman from among the membership of the Commission are hereby transferred to the President.

Message of the President

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 8 of 1950, prepared in accordance with the Reorganization Act of 1949 and providing for reorganizations in the Federal Trade Commission. My reasons for transmitting this plan are stated in any accompanying general message.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 8 of 1950 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

The taking effect of the reorganizations included in this plan may not in itself result in substantial immediate savings. However, many benefits in improved operations are probable during the next years which will result in a reduction in expenditures as compared with those that would be otherwise necessary. An itemization of these reductions in advance of actual experience under this plan is not practicable.

Harry S. Truman.

REORGANIZATION PLAN NO. 4 OF 1961

Eff. July 9, 1961, 26 F.R. 6191, 75 Stat. 837

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 9, 1961, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

FEDERAL TRADE COMMISSION

Section 1. Authority To Delegate

(a) In addition to its existing authority, the Federal Trade Commission, hereinafter referred to as the "Commission", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter; *Provided, however*, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended [see 5 U.S.C. 556].

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Commission shall by rule prescribe: *Provided, however*, That the vote of a majority of the Commission less one member thereof shall be sufficient to bring any such action before the Commission for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

Sec. 2. Transfer of Functions to the Chairman

In addition to the functions transferred by the provisions of Reorganization Plan No. 8 of 1950 (64 Stat. 1264) [set out as a note under this section], there are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to section 1 of this reorganization plan.

Message of the President

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 4 of 1961, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization in the Federal Trade Commission.

This Reorganization Plan No. 4 of 1961 follows upon my message of April 13, 1961, to the Congress of the United States. It is believed that the taking effect of the reorganizations included in this plan will provide for greater efficiency in the dispatch of the business of the Federal Trade Commission.

The plan provides for greater flexibility in the handling of the business before the Commission, permitting its disposition at different levels so as better to promote its efficient dispatch. Thus matters both of an adjudicatory and regulatory nature may, depending upon their importance and their complexity, be finally consummated by divisions of the Commission, individual Commissioners, hearing examiners, and, subject to the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), by other employees. This will relieve the Commissioners from the necessity of dealing with many matters of lesser importance and thus conserve their time for the consideration of major matters of policy and planning. There is, however, reserved to the Commission as a whole the right to review any such decision, report or certification either upon its own initiative or upon the petition of a party or intervenor demonstrating to the satisfaction of the Commission the desirability of having the matter reviewed at the top level.

Provision is also made, in order to maintain the fundamental bipartisan concept explicit in the basic statute creating the Commission, for mandatory review of any such decision, report or certification upon the vote of a majority of the Commission less one member.

Inasmuch as the assignment of delegated functions in particular cases and with reference to particular problems to divisions of the Commission, to Commissioners, to hearing examiners, to employees and boards of employees must require continuous and flexible handling, depending both upon the amount and nature of the business, that function is placed in the Chairman by section 2 of the plan.

By providing sound organizational arrangements, the taking effect of the reorganizations included in the accompanying reorganization plan will make possible more economical and expeditious administration of the affected functions. It is, however, impracticable to itemize at this time the reductions of expenditures which it is probable will be brought about by such taking effect.

After investigation, I have found and hereby declare that each reorganization included in the reorganization plan transmitted herewith is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I recommend that the Congress allow the reorganization plan to become effective.

JOHN F KENNEDY.

CROSS REFERENCES

Applicability of this subchapter to the insurance business, see section 1011 et seq. of this title.

Compensation of Chairman and members, see sections 5314 and 5315 of Title 5, Government Organization and Employees.

Jurisdiction of Commission in enforcement of Clayton Act, see section 21 of this title.

Power of Commission under the Packers and Stockyards Act as restricted, see section 227 of Title 7, Agriculture.

§ 42. Employees; expenses

Each commissioner shall receive a salary, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each Commissioner, the attorneys, and such special experts and examiners as the Commission may from time to time find necessary for the conduct of its work, all employees of the Commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the Commission and by the Director of the Office of Personnel Management.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

Until otherwise provided by law, the Commission may rent suitable offices for its use.

The General Accounting Office shall receive and examine all accounts of expenditures of the Commission.

(Sept. 26, 1914, ch. 311, § 2, 38 Stat. 718; June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24; 1978 Reorg. Plan No. 2, § 102, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

The classified civil service, referred to in second par., means the "competitive service", see section 2102 of Title 5, Government Organization and Employees. Rules and regulations of the Civil Service Commission for entry into the service are prescribed generally under authority of section 3301 et seq. of Title 5.

CODIFICATION

In the first par., provisions that fixed the salary of the commissioners have been omitted as obsolete. The positions of chairman and members of the commission are now under the Executive Schedule, see sections 5414 and 5315 of Title 5, Government Organization and Employees.

Provisions that fixed the salary of the secretary of the commission, payable in like manner, have been omitted as obsolete. The position is now subject to chapter 51 and subchapter III of chapter 53 (relating to classification and General Schedule pay rates) and section 5504 (relating to biweekly pay periods) of Title 5.

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such Commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

"General Accounting Office" was substituted in text for "Auditor for the State and Other Departments" pursuant to act June 10, 1921, which transferred all powers and duties of the Comptroller, six auditors, and certain other employees of the Treasury to the General Accounting Office. See section 701 et seq. of Title 31, Money and Finance.

§ 43. Office and place of meeting

The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

(Sept. 26, 1914, ch. 311, § 3, 38 Stat. 719.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 44. Definitions

The words defined in this section shall have the following meaning when found in this subchapter, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" includes all documents, papers, correspondence, books of account, and financial and corporate records.

"Acts to regulate commerce" means subtitle IV of title 49 and the Communications Act of 1934 [47 U.S.C. 151 et seq.] and all Acts amendatory thereof and supplementary thereto.

"Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890; also sections 73 to 77, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894; also the Act entitled "An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes' ", approved February 12, 1913; and also the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914.

(Sept. 26, 1914, ch. 311, § 4, 38 Stat. 719; Mar. 21, 1938, ch. 49, § 2, 52 Stat. 111.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in text, is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, referred to in the text, is known as the Sherman Act, and is classified to sections 1 to 7 of this title.

Sections 73 to 77, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894, referred to in text, are known as the Wilson Tariff Act. Sections 73 to 76 are classified to sections 8 to 11 of this title, and section 77 was not classified to the Code.

Act February 12, 1913, is set out as amendments to sections 8 and 11 of this title.

The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, referred to in text, is the Clayton Act. For classification of the Act to the Code, see References in Text note set out under section 12 of this title.

CODIFICATION

"Subtitle IV of title 49" was substituted in text for "the Act entitled 'An Act to regulate commerce', approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto" on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1938—Act Mar. 21, 1938, amended section generally.

CROSS REFERENCES

Additional definitions, see sections 45 and 55 of this title.

§ 45. Unfair methods of competition unlawful; prevention by Commission

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

(2) The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.], and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. 227(b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.

(b) Proceeding by Commission; modifying and setting aside orders

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this subchapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require, except that (1) the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section; and (2) in the case of an order, the Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part. The Commission shall determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph[1] (2) not later than 120 days after the date of the filing of such request.

(c) Review of order; rehearing

Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgement to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

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[1] So in original. Probably should be "clause".

The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Jurisdiction of court

Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) Exemption from liability

No order of the Commission or judgement of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

(f) Service of complaints, orders and other processes; return

Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of order

An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

(2) Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed, or the petition for review dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the court of appeals; or

(4) Upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed.

(h) Modification or setting aside of order by Supreme Court

If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(i) Modification or setting aside of order by Court of Appeals

If the order of the Commission is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied; or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(j) Rehearing upon order or remand

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.

(k) "Mandate" defined

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(*l*) Penalty for violation of order; injunctions and other appropriate equitable relief

Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in a case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

(m) Civil actions for recovery of penalties for knowing violations of rules and cease and desist orders respecting unfair or deceptive acts or practices; jurisdiction; maximum amount of penalties; continuing violations; de novo determinations; compromise or settlement procedure

(1)(A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this chapter respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1) of this section) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) of this section that any act or practice is unfair or deceptive, and issues a final cease and desist order with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation.

(C) In the case of a violation through continuing failure to comply with a rule or with subsection (a)(1) of this section, each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such action against such defendant shall be tried de novo.

(3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court.

(Sept. 26, 1914, ch. 311, § 5, 38 Stat. 719; Mar. 21, 1938, ch. 49, § 3, 52 Stat. 111; June 23, 1938, ch. 601, title XI, § 1107(f), 52 Stat. 1028; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Mar. 16, 1950, ch. 61, § 4(c), 64 Stat. 21; July 14, 1952, ch. 745, § 2, 66 Stat. 632; Aug. 23, 1958, Pub. L. 85-726, title XIV, §§ 1401(b), 1411, 72 Stat. 806, 809; Aug. 28, 1958, Pub. L. 85-791, § 3, 72 Stat. 942; Sept. 2, 1958, Pub. L. 85-909, § 3, 72 Stat. 1750; June 11, 1960, Pub. L. 86-507, § 1(13), 74 Stat. 200; Nov. 16, 1973, Pub. L. 93-153, title IV, § 408(c), (d), 87 Stat. 591, 592; Jan. 4, 1975, Pub. L. 93-637, title II, §§ 201(a), 204(b), 205(a), 88 Stat. 2193, 2200; Dec. 12, 1975, Pub. L. 94-145, § 3, 89 Stat. 801; July 23, 1979, Pub. L. 96-37, § 1(a), 93 Stat. 95; May 28, 1980, Pub. L. 96-252, § 2, 94 Stat. 374; Oct. 8, 1982, Pub. L. 97-290, title IV, § 403, 96 Stat. 1246; Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(12), 98 Stat. 3358; Aug. 10, 1987, Pub. L. 100-86, title VII, § 715(a)(1), 101 Stat. 655.)

References in Text

The Acts to regulate commerce, referred to in subsec. (a)(2), are defined in section 44 of this title.

The Federal Aviation Act of 1958, referred to in subsec. (a)(2), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 737, as amended, which is classified generally to chapter 20 (§ 1301 et seq.) of Title 49, Appendix, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49, Appendix, and Tables.

The Packers and Stockyards Act, 1921, as amended, referred to in subsec. (a)(2), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, as amended, which is classified to chapter 9 (§ 181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

The Antitrust Acts, referred to in subsec. (e), are defined in section 44 of this title.

Codification

In subsec. (c), "section 1254 of title 28" was substituted for "section 240 of the Judicial Code [28 U.S.C. 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

Amendments

1987—Subsec. (a)(2). Pub. L. 100-86 inserted "Federal credit unions described in section 57a(f)(4) of this title," after "section 57a(f)(3) of this title,".

1984—Subsec. (e). Pub. L. 98-620 struck out provision that such proceedings in the court of appeals had to be given precedence over other cases pending therein, and had to be in every way expedited.

1982—Subsec. (a)(3). Pub. L. 97-290 added par. (3).

1980—Subsec. (b). Pub. L. 96-252 added cl. (2) and provision following cl. (2) requiring that the Commission determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph (2) not later than 120 days after the date of the filing of such request.

1979—Subsec. (a)(2). Pub. L. 96-37 added savings and loan institutions described in section 57a(f)(3) of this title to the enumeration of entities exempted from the Commission's power to prevent the use of unfair methods of competition and unfair or deceptive acts or practices.

1975—Pub. L. 93-637, § 201(a), substituted "in or affecting commerce" for "in commerce" wherever appearing.

Subsec. (a). Pub. L. 94-145 struck out pars. (2) to (5) which permitted fair trade pricing of articles for retail sale and State enactment of nonsigner provisions, and redesignated par. (6) as (2).

Subsec. (m). Pub. L. 93-637, §§ 204(b), 205(a), added subsec. (m). Former subsec. (m), relating to the election by the Commission to appear in its own name after notifying and consulting with and giving the Attorney General 10 days to take the action proposed by the Commission, was struck out.

1973—Subsec. (*l*). Pub. L. 93-153, § 408(c), raised the maximum civil penalty for each violation to $10,000 and inserted provisions empowering the United States District Courts to grant mandatory injunctions and such other and further equitable relief as they might deem appropriate for the enforcement of final Commission orders.

Subsec. (m). Pub. L. 93-153, § 408(d), added subsec. (m).

1960—Subsec. (f). Pub. L. 86-507 substituted "mailing a copy thereof by registered mail or by certified mail" for "registering and mailing a copy thereof", and "mailed by registered mail or by certified mail" for "registered and mailed".

1958—Subsec. (a)(6). Pub. L. 85-909 substituted "persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended," for "persons, partnerships or corporations subject to the Packers and Stockyards Act, 1921,".

Pub. L. 85-726, § 1411, substituted "Federal Aviation Act of 1958" for "Civil Aeronautics Act of 1938".

Subsec. (b). Pub. L. 85-791, § 3(a), struck out "the transcript of" before "the record in the proceeding" in sixth sentence.

Subsec. (c). Pub. L. 85-791, § 3(b), in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", and "Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28" for "Commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commission", and which, in third sentence struck out "and transcript" after "petition", inserted "concurrently with the Commission until the filing of the record" and struck out "upon the pleadings, evidence, and proceedings set forth in such transcript" before "a decree affirming".

Subsec. (d). Pub. L. 85-791, § 3(c), substituted "Upon the filing of the record with it the" for "The".

1952—Subsec. (a). Act July 14, 1952, amended subsec. (a) generally to permit fair trade pricing of articles for retail sale.

1950—Subsec. (*l*). Act Mar. 16, 1950, inserted last sentence to make each separate violation of a cease and desist order as a separate offense, except that each day of a continuing failure to obey a final order shall be a separate offense.

1938—Subsec. (a). Act June 23, 1938, inserted "air carriers and foreign air carriers subject to chapter 9 of title 49" in second par.

Act Mar. 21, 1938, amended section generally.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 23 of Pub. L. 96-252 provided that: "The provisions of this Act [enacting sections 57a-1 and 57b-1 to 57b-4 of this title, amending sections 45, 46, 50, 57a, 57c, and 58 of this title, and enacting provisions set out as notes under sections 46, 57a, 57a-1, 57c, and 58 of this title], and the amendments made by this Act, shall take effect on the date of the enactment of this Act [May 28, 1980]."

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment of subsec. (a) by Pub. L. 94-145 effective upon expiration of ninety-day period beginning on Dec. 12, 1975, see section 4 of Pub. L. 94-145, set out as a note under section 1 of this title.

Section 205(b) of Pub. L. 93-637 provided that: "The amendment made by subsection (a) of this section [enacting provisions of subsec. (m) relating to civil penalties] shall not apply to any violation, act, or practice to the extent that such violation, act, or practice occurred before the date of enactment of this Act [Jan. 4, 1975]."

Repeal of subsec. (m) relating to court appearances of Commission by section 204(b) of Pub. L. 93-637 not applicable to any civil action commenced before Jan. 4, 1975, see section 204(c) of Pub. L. 93-637, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-726 effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office, see section 1505(2) of Pub. L. 85-726 set out as a note under section 1301 of Title 49, Appendix, Transportation. The Administrator was appointed, qualified, and took office on October 31, 1958.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Mar. 16, 1950, effective July 1, 1950, see note set out under section 347 of Title 21, Food and Drugs.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE COVERING GRANT OF DISTRICT SUBPENA ENFORCEMENT AUTHORITY AND AUTHORITY TO GRANT PRELIMINARY INJUNCTIVE RELIEF

Section 408(a), (b) of Pub. L. 93-153 provided that:

"(a)(1) The Congress hereby finds that the investigative and law enforcement responsibilities of the Federal Trade Commission have been restricted and hampered because of inadequate legal authority to enforce subpenas and to seek preliminary injunctive relief to avoid unfair competitive practices.

"(2) The Congress further finds that as a direct result of this inadequate legal authority significant delays have occurred in a major investigation into the legality of the structure, conduct, and activities of the petroleum industry, as well as in other major investigations designed to protect the public interest.

"(b) It is the purpose of this Act [amending this section and sections 46, 53, and 56 of this title] to grant the Federal Trade Commission the requisite authority to insure prompt enforcement of the laws the Commission administers by granting statutory authority to directly enforce subpenas issued by the Commission and to seek preliminary injunctive relief to avoid unfair competitive practices."

PURPOSE OF ACT JULY 14, 1952

Section 1 of act July 14, 1952, provided: "That it is the purpose of this Act [amending this section] to protect the rights of States under the United States Constitution to regulate their internal affairs and more particularly to enact statutes and laws, and to adopt policies, which authorize contracts and agreements prescribing minimum or stipulated prices for the resale of commodities and to extend the minimum or stipulated prices prescribed by such contracts and agreements to persons who are not parties thereto. It is the further purpose of this Act to permit such statutes, laws, and public policies to apply to commodities, contracts, agreements, and activities in or affecting interstate or foreign commerce."

Cross References

Certiorari and appeal, see section 1254 of Title 28, Judiciary and Judicial Procedure.

Enforcement by Federal Trade Commission of requirements imposed under section 1601 et seq. of this title, see section 1607 of this title.

Enforcement of provisions of sections 13, 14, 18 and 19 of this title, see section 21 of this title.

Proceedings to enforce penalty for violations of order, see section 56 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1, 16a, 18a, 52, 53, 56, 57a, 57b, 57b-1, 1456, 1681s, 2006, 2310, 2823, 4002, 4021, 4301, 4404 of this title; title 7 sections 193, 228b-2; title 17 section 109; title 21 sections 347b, 378; title 39 section 3009; title 42 sections 6303, 8217.

§ 46. Additional powers of Commission

The Commission shall also have power—

(a) Investigation of persons, partnerships, or corporations

To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.

(b) Reports of persons, partnerships, and corporations

To require, by general or special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

(c) Investigation of compliance with antitrust decrees

Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the Commission.

(d) Investigations of violations of antitrust statutes

Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) Readjustment of business of corporations violating antitrust statutes

Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) Publication of information; reports

To make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use: *Provided*, That the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes.

(g) Classification of corporations; regulations

From time to time classify corporations and (except as provided in section 57a(a)(2) of this title) to make rules and regulations for the purpose of carrying out the provisions of this subchapter.

(h) Investigations of foreign trade conditions; reports

To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Provided, That the exception of "banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce" from the Commission's powers defined in clauses (a) and (b) of this section, shall not be construed to limit the Commission's authority to gather and compile information, to investigate, or to require reports or answers from, any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations, or industry which is not engaged or is engaged only incidentally in banking, in business as a savings and loan institution, in business as a Federal credit union, or in business as a common carrier subject to the Act to regulate commerce.

The Commission shall establish a plan designed to substantially reduce burdens imposed upon small businesses as a result of requirements established by the Commission under clause (b) relating to the filing of quarterly financial reports. Such plan shall (1) be established after consultation with small businesses and persons who use the information contained in such quarterly financial reports; (2) provide for a reduction of the number of small businesses required to file such quarterly financial reports; and (3) make revisions in the forms used for such quarterly financial reports for the purpose of reducing the complexity of such forms. The Commission, not later than December 31, 1980, shall submit such plan to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives. Such plan shall take effect not later than October 31, 1981.

No officer or employee of the Commission or any Commissioner may publish or disclose information to the public, or to any Federal agency, whereby any line-of-business data furnished by a particular establishment or individual can be identified. No one other than designated sworn officers and employees of the Commission may examine the line-of-business reports from individual firms, and information provided in the line-of-business program administered by the Commission shall be used only for statistical purposes. Information for carrying out specific law enforcement responsibilities of the Commission shall be obtained under practices and procedures in effect on May 28, 1980, or as changed by law.

Nothing in this section (other than the provisions of clause (c) and clause (d)) shall apply to the business of insurance, except that the Commission shall have authority to conduct studies and prepare reports relating to the business of insurance. The Commission may exercise such authority only upon receiving a request which is agreed to by a majority of the members of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives. The authority to conduct any such study shall expire at the end of the Congress during which the request for such study was made.

(Sept. 26, 1914, ch. 311, § 6, 38 Stat. 721; Nov. 16, 1973, Pub. L. 93-153, title IV, § 408(e), 87 Stat. 592; Jan. 4, 1975, Pub. L. 93-637, title II, §§ 201(b), 202(b), 203(a), 88 Stat. 2193, 2198; July 23, 1979, Pub. L. 96-37, § 1(b), 93 Stat. 95; Mar. 25, 1980, H. Res. 549; May 28, 1980, Pub. L. 96-252, §§ 3-5(a), 94 Stat. 374, 375; Aug. 10, 1987, Pub. L. 100-86, title VII, § 715(a), (b), 101 Stat. 655.)

REFERENCES IN TEXT

The Act to regulate commerce, referred to in subsecs. (a), (b), and the proviso following subsec. (h), is defined in section 44 of this title.

The antitrust Acts, referred to in subsecs. (c) to (e), are defined in section 44 of this title.

AMENDMENTS

1987—Subsecs. (a), (b). Pub. L. 100-86, § 715(a)(1), (2), inserted reference to Federal credit unions described in section 57a(f)(4) of this title.

Pub. L. 100-86, § 715(b), in proviso following subsec. (h), inserted reference to Federal credit unions described in section 57a(f)(4) of this title and reference to in business as a Federal credit union.

1980—Subsec. (f). Pub. L. 96-252, § 3(a), substituted "as are" for ", except trade secrets and names of customers, as it shall deem expedient" and inserted proviso restricting Commission's authority to make public trade secrets or commercial or financial information which is obtained from any person and which is privileged or confidential.

Pub. L. 96-252, §§ 3(b)-5(a), inserted three undesignated paragraphs following subsec. (h) requiring the Commission to establish a plan to reduce burdens imposed upon small businesses by the quarterly financial reporting requirements under subsec. (b) of this section, prohibiting Commissioners and officers and employees of the Commission from publishing or disclosing information whereby line-of-business data furnished by particular establishments or individuals can be identified, and, with certain exceptions, making this section inapplicable to the business of insurance.

1979—Subsecs. (a), (b). Pub. L. 96-37, § 1(b)(1), (2), inserted reference to savings and loan institutions described in section 57a(f)(3) of this title.

Pub. L. 96-37, § 1(b)(3), in proviso following subsec. (h), inserted references to savings and loan institutions and to persons, partnerships, corporations, groups of persons, partnerships, or corporations or industries that are not engaged or are engaged only incidentally in business as savings and loan institutions.

1975—Subsec. (a). Pub. L. 93-637, §§ 201(b), 203(a)(1), substituted "in or whose business affects commerce" for "in commerce", "person, partnership, or corporation" for "corporation", and "persons, partnerships, and corporations" for "corporations and to individuals, associations, and partnerships".

Subsec. (b). Pub. L. 93-637, §§ 201(b), 203(a)(2), substituted "in or whose business affects commerce" for "in commerce", "special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting" for "special orders, corporations engaged in or whose business affects commerce, excepting", and "respective persons, partnerships, and corporations" for "respective corporations".

Subsec. (g). Pub. L. 93-637, § 202(b), inserted "(except as provided in section 57a(a)(2) of this title)" before "to make rules and regulations".

Pub. L. 93-637, § 203(a)(3), in proviso following subsec. (h), substituted "any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations," for "any such corporation to the extent that such action is necessary to the investigation of any corporation, group of corporations,".

1973—Pub. L. 93-153 inserted proviso following subsec. (h) that the Commission's investigatory powers to gather and compile information, investigate, and require reports or answers is not curtailed as regards banks and common carriers when the investigation in question is an investigation of a corporation, group of corporations, or industry not engaged or engaged only incidentally in banking or in business as a common carrier subject to the Act to regulate commerce notwithstanding provisions excepting banks and common carriers subject to the Act from the exercise of the Commission's power to investigate and require reports from corporations.

CHANGE OF NAME

The name of the Committee on Interstate and Foreign Commerce of the House of Representatives was changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution 549, Ninety-sixth Congress, Mar. 25, 1980.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-252 effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as a note under section 45 of this title.

APPLICABILITY OF 1975 AMENDMENT TO SUBSECTION (g) OF THIS SECTION

For applicability to rules promulgated or proposed under subsec. (g) of this section prior to Jan. 4, 1975, of amendment made to said subsec. (g) by section 202(b) of Act Jan. 4, 1975, see "Applicability" provisions of section 202(c) of Act Jan. 4, 1975, set out as a note under section 57a of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

STUDY AND EVALUATION OF EFFECTIVENESS OF STATE POLICIES AND PROGRAMS RELATING TO REGULATION OF CERTAIN HEALTH INSURANCE POLICIES

Section 5(b) of Pub. L. 96-252 provided that: "The amendment made in subsection (a) [adding undesignated paragraph authorizing studies and reports relating to the business of insurance] shall not be construed to prohibit the Federal Trade Commission from participating with the Secretary of Health and Human Services in a comprehensive study and evaluation of the comparative effectiveness of various State policies and programs relating to the regulation of health insurance policies available for purchase by individuals who are eligible for benefits under the program of health insurance benefits established in title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]."

EX. ORD. NO. 10544. INSPECTION OF INCOME TAX RETURNS BY FEDERAL TRADE COMMISSION

Ex. Ord. No. 10544, July 12, 1954, 19 F.R. 4289, provided:

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code (53 Stat. 29; 54 Stat. 1008; 55 Stat. 722) and in the interest of the internal management of the Government, it is hereby ordered that corporation income tax returns made for the year 1953 and subsequent years shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act of September 26, 1914, 38 Stat. 717, [this subchapter], such inspection to be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in the Treasury decision relating to the inspection of returns by the Federal Trade Commission, approved by me this date [T.D. 6080, 19 F.R. 4308].

This Executive Order shall be effective upon its filing for publication in the Federal Register.

CROSS REFERENCES

Enforcement by Federal Trade Commission of requirements imposed under section 1601 et seq. of this title, see section 1607 of this title.

Jurisdiction, powers and duties of Secretary of Agriculture in enforcing the provisions of the Packers and Stockyards Act, application of this section to, see section 222 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57b-1, 57b-2, 57b-3 of this title; title 7 sections 222, 2146, 3807; title 13 section 91; title 21 sections 467d, 677, 1051.

§ 46a. Concurrent resolution essential to authorize investigations

After June 16, 1933, no new investigations shall be initiated by the Commission as the result of a legislative resolution, except the same be a concurrent resolution of the two Houses of Congress.

(June 16, 1933, ch. 101, § 1, 48 Stat. 291.)

CODIFICATION

Section was not enacted as part of the Federal Trade Commission Act which comprises this subchapter.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 47. Reference of suits under antitrust statutes to Commission

In any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the Commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The Commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

(Sept. 26, 1914, ch. 311, § 7, 38 Stat. 722.)

REFERENCES IN TEXT

The words "In any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts" have reference to actions under sections 4, 9, and 25 of this title.

The antitrust Acts, referred to in text, are defined in section 44 of this title.

Transfer of Functions

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 48. Information and assistance from departments

The several departments and bureaus of the Government when directed by the President shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this subchapter, and shall detail from time to time such officials and employees to the Commission as he may direct.

(Sept. 26, 1914, ch. 311, § 8, 38 Stat. 722.)

Transfer of Functions

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

Cross References

Jurisdiction, powers and duties of Secretary of Agriculture in enforcing the provisions of the Packers and Stockyards Act, application of this section to, see section 222 of Title 7, Agriculture.

Section Referred to in Other Sections

This section is referred to in title 7 sections 222, 610, 2146, 3807; title 21 sections 467d, 677, 1051.

§ 49. Documentary evidence; depositions; witnesses

For the purposes of this subchapter the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpoenas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, partnership, or corporation issue an order requiring such person, partnership, or corporation to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person, partnership, or corporation to comply with the provisions of this subchapter or any order of the Commission made in pursuance thereof.

The Commission may order testimony to be taken by deposition in any proceeding or investigation pending under this subchapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(Sept. 26, 1914, ch. 311, § 9, 38 Stat. 722; Oct. 15, 1970, Pub. L. 91-452, title II, § 211, 84 Stat. 929; Jan. 4, 1975, Pub. L. 93-637, title II, § 203(b), 88 Stat. 2198.)

Amendments

1975—First par. Pub. L. 93-637, § 203(b)(1), substituted "person, partnership, or corporation" for "corporation".

Third par. Pub. L. 93-637, § 203(b)(2), substituted "person, partnership, or corporation" for "corporation or other person" wherever appearing.

Fourth par. Pub. L. 93-637, § 203(b)(3), substituted "person, partnership, or corporation" for "person or corporation".

1970—Seventh par. Pub. L. 91-452 struck out provisions which granted immunity from prosecution for any natural person testifying or producing evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it.

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

Savings Provision

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

Transfer of Functions

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Application of rules to this section, see notes by Advisory Committee under rules 45 and 81, Title 28, Appendix, Judiciary and Judicial Procedure.

Mandamus as abolished and manner of obtaining relief heretofore available, see rule 81.

Subpoena, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Application of rule 42 to this section, see note by Advisory Committee under rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

Criminal contempt, see rule 42.

Subpoena, see rule 17.

CROSS REFERENCES

Administrator of Wages and Hour Division, Secretary of Labor, and the industry committees under Fair Labor Standards Act, application of this section to, see section 209 of Title 29, Labor.

Contempts—
  - Contempts constituting crimes, see section 402 of Title 18, Crimes and Criminal Procedure.
  - Jury trial of criminal contempts, see section 3691 of Title 18.
  - Limitation of prosecution, see section 3285 of Title 18.
  - Power of court, see section 401 of Title 18.
  - Power of Supreme Court to prescribe rules of procedure, see section 2072 et seq. of Title 28, Judiciary and Judicial Procedure.
  - Witness in foreign country failing to appear pursuant to subpoena, see section 1784 of Title 28.

Hearings and investigations under Fair Labor Standards Act, application to, see section 209 of Title 29, Labor.

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Jurisdiction, powers and duties of Secretary of Agriculture in enforcing the provisions of the Packers and Stockyards Act, application of this section to, see section 222 of Title 7, Agriculture.

Per diem and mileage of witnesses, see section 1821 of Title 28, Judiciary and Judicial Procedure.

Writs, issuance of, see section 1651 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 57b-1 of this title; title 7 sections 222, 610, 2146, 3807; title 21 sections 467d, 677, 1051; title 26 section 5274; title 27 section 202; title 29 sections 177, 209, 521, 1134, 1573, 1862, 2004; title 33 sections 907, 944; title 42 section 7255; title 50 App. section 1983.

§ 50. Offenses and penalties

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce any documentary evidence, if in his power to do so, in obedience to an order of a district court of the United States directing compliance with the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this subchapter, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, partnership, or corporation subject to this subchapter, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such person, partnership, or corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such person, partnership, or corporation, or who shall willfully refuse to submit to the Commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such person, partnership, or corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any persons, partnership, or corporation required by this subchapter to file any annual or special report shall fail so to do within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

(Sept. 26, 1914, ch. 311, § 10, 38 Stat. 723; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Jan. 4, 1975, Pub. L. 93-637, title II, § 203(c), 88 Stat. 2199; May 28, 1980, Pub. L. 96-252, § 6, 94 Stat. 376.)

AMENDMENTS

1980—First par. Pub. L. 96-252 inserted "any" after "produce" and "an order of a district court of the United States directing compliance with" after "obedience to".

1975—Second par. Pub. L. 93-637, § 203(c)(1), substituted "person, partnership, or corporation" for "corporation" wherever appearing.

Third par. Pub. L. 93-637, § 203(c)(2), substituted "If any persons, partnership, or corporation" for "If any corporation", and "in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business" for "in the district where the corporation has its principal office or in any district in which it shall do business".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-252 effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as a note under section 45 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena, see rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Administrator of Wages and Hour Division, Secretary of Labor, and the industry committees under Fair Labor Standards Act, application of this section to, see section 209 of Title 29, Labor.

Dissemination of false advertisements—
  Penalty for, see section 54 of this title.
  Unlawfulness of, see section 52 of this title.

Fraud and false statements, see section 1001 et seq. of Title 18, Crimes and Criminal Procedure.

Hearings and investigations under Fair Labor Standards Act, application, see section 209 of Title 29, Labor.

Jurisdiction, powers and duties of Secretary of Agriculture in enforcing the provisions of the Packers and Stockyards Act, application of this section to, see section 222 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 222, 610, 2146, 3807; title 21 sections 467d, 677, 1051; title 26 section 5274; title 27 section 202; title 29 sections 177, 209, 521, 1134, 1862, 2004; title 33 sections 907, 944; title 50 App. 1983.

§ 51. Effect on other statutory provisions

Nothing contained in this subchapter shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in this subchapter be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

(Sept. 26, 1914, ch. 311, § 11, 38 Stat. 724.)

REFERENCES IN TEXT

The antitrust Acts, referred to in text, are defined in section 44 of this title.

The Acts to regulate commerce, referred to in text, are defined in section 44 of this title.

§ 52. Dissemination of false advertisements

(a) Unlawfulness

It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

(1) By United States mails, or in or having an effect upon commerce, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce, of food, drugs, devices, or cosmetics.

(b) Unfair or deceptive act or practice

The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of section 45 of this title.

(Sept. 26, 1914, ch. 311, § 12, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114, and amended Jan. 4, 1975, Pub. L. 93-637, title II, § 201(c), 88 Stat. 2193.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-637 substituted "in or having an effect upon commerce," for "in commerce".

Subsec. (b). Pub. L. 93-637 substituted "in or affecting commerce" for "in commerce".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 54, 55 of this title; title 21 section 352.

§ 53. False advertisements; injunctions and restraining orders

(a) Power of Commission; jurisdiction of courts

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 52 of this title, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 45 of this title, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 45 of this title, would be to the interest of the public,

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

(b) Temporary restraining orders; preliminary injunctions

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: *Provided, however,* That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: *Provided further,* That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

(c) Exception of periodical publications

Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—

(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement,

the court shall exclude such issue from the operation of the restraining order or injunction.

(Sept. 26, 1914, ch. 311, § 13, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114, and amended Nov. 16, 1973, Pub. L. 93-153, title IV, § 408(f), 87 Stat. 592.)

AMENDMENTS

1973—Subsecs. (b), (c). Pub. L. 93-153 added subsec. (b) and redesignated former subsec. (b) as (c).

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 55, 56 of this title; title 21 sections 352, 378.

§ 54. False advertisements; penalties

(a) Imposition of penalties

Any person, partnership, or corporation who violates any provision of section 52(a) of this title shall, if the use of the commodity advertised may be injurious to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than $5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than $10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: *Provided,* That for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act [21 U.S.C. 601 et seq.] shall be conclusively presumed not injurious to health at the time the same leave official "establishments."

(b) Exception of advertising medium or agency

No publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement.

(Sept. 26, 1914, ch. 311, § 14, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114.)

REFERENCES IN TEXT

The Meat Inspection Act, referred to in subsec. (a), is act Mar. 4, 1907, ch. 2907, titles I to IV, as added Dec. 15, 1967, Pub. L. 90-201, 81 Stat. 584, as amended, which is classified to subchapters I to IV (§ 601 et seq.) of chapter 12 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 21 and Tables.

Effective Date

Section 5(b) of act Mar. 21, 1938, provided: "Section 14 of the Federal Trade Commission Act [this section] added to such Act by section 4 of this Act, shall take effect on the expiration of sixty days after the date of the enactment of this Act [Mar. 21, 1938]."

Transfer of Functions

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

Cross References

Offenses and penalties generally, see section 50 of this title.

Section Referred to in Other Sections

This section is referred to in section 55 of this title; title 21 section 352.

§ 55. Additional definitions

For the purposes of sections 52 to 54 of this title—

(a) False advertisement

(1) The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

(2) In the case of oleomargarine or margarine an advertisement shall be deemed misleading in a material respect if in such advertisement representations are made or suggested by statement, word, grade designation, design, device, symbol, sound, or any combination thereof, that such oleomargarine or margarine is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients contained in such oleomargarine or margarine.

(b) Food

The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(c) Drug

The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(d) Device

The term "device" (except when used in subsection (a) of this section) means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

(1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,

(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or

(3) intended to affect the structure or any function of the body of man or other animals, and

which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(e) Cosmetic

The term "cosmetic" means (1) articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap.

(f) Oleomargarine or margarine

For the purposes of this section and section 347 of title 21, the term "oleomargarine" or "margarine" includes—

(1) all substances, mixtures, and compounds known as oleomargarine or margarine;

(2) all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

(Sept. 26, 1914, ch. 311, § 15, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114, and amended Mar. 16, 1950, ch. 61, § 4(a), (b), 64 Stat. 21; May 28, 1976, Pub. L. 94-295, § 3(a)(1)(B), 90 Stat. 575.)

Amendments

1976—Subsec. (d). Pub. L. 94-295 expanded definition of "device" to include implements, machines, implants, in vitro reagents, and other similar or related articles, added recognition in the National Formulary or the United States Pharmacopeia, or any supplement to the Formulary or Pharmacopeia, to the enumeration of conditions under which a device may qualify for inclusion under this chapter, and inserted requirements that a device be one which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

1950—Subsec. (a). Act Mar. 16, 1950, § 4(a), designataed existing provisions as par. (1) and added par. (2) relating to oleomargarine.

Subsec. (f). Act Mar. 16, 1950, § 4(b), added subsec. (f).

Effective Date of 1950 Amendment

Amendment by act Mar. 16, 1950, effective July 1, 1950, see note set out under section 347 of Title 21, Food and Drugs.

Cross References

Other definitions, see sections 44 and 45 of this title.

Section Referred to in Other Sections

This section is referred to in title 21 sections 347b, 352.

§ 56. Commencement, defense, intervention and supervision of litigation and appeal by Commission or Attorney General

(a) Procedure for exercise of authority to litigate or appeal

(1) Except as otherwise provided in paragraph (2) or (3), if—

(A) before commencing, defending, or intervening in, any civil action involving this subchapter (including an action to collect a civil penalty) which the Commission, or the Attorney General on behalf of the Commission, is authorized to commence, defend, or intervene in, the Commission gives written notification and undertakes to consult with the Attorney General with respect to such action; and

(B) the Attorney General fails within 45 days after receipt of such notification to commence, defend, or intervene in, such action;

the Commission may commence, defend, or intervene in, and supervise the litigation or, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose.

(2) Except as otherwise provided in paragraph (3), in any civil action—

(A) under section 53 of this title (relating to injunctive relief);

(B) under section 57b of this title (relating to consumer redress);

(C) to obtain judicial review of a rule prescribed by the Commission, or a cease and desist order issued under section 45 of this title; or

(D) under the second paragraph of section 49 of this title (relating to enforcement of a subpena) and under the fourth paragraph of such section (relating to compliance with section 46 of this title);

the Commission shall have exclusive authority to commence or defend, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose, unless the Commission authorizes the Attorney General to do so. The Commission shall inform the Attorney General of the exercise of such authority and such exercise shall not preclude the Attorney General from intervening on behalf of the United States in such action and any appeal of such action as may be otherwise provided by law.

(3)(A) If the Commission makes a written request to the Attorney General, within the 10-day period which begins on the date of the entry of the judgment in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), to represent itself through any of its attorneys designated by it for such purpose before the Supreme Court in such action, it may do so, if—

(i) the Attorney General concurs with such request; or

(ii) the Attorney General, within the 60-day period which begins on the date of the entry of such judgment—

(a) refuses to appeal or file a petition for writ of certiorari with respect to such civil action, in which case he shall give written notification to the Commission of the reasons for such refusal within such 60-day period; or

(b) the Attorney General fails to take any action with respect to the Commission's request.

(B) In any case where the Attorney General represents the Commission before the Supreme Court in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), the Attorney General may not agree to any settlement, compromise, or dismissal of such action, or confess error in the Supreme Court with respect to such action, unless the Commission concurs.

(C) For purposes of this paragraph (with respect to representation before the Supreme Court), the term "Attorney General" includes the Solicitor General.

(4) If, prior to the expiration of the 45-day period specified in paragraph (1) of this section or a 60-day period specified in paragraph (3), any right of the Commission to commence, defend, or intervene in, any such action or appeal may be extinguished due to any procedural requirement of any court with respect to the time in which any pleadings, notice of appeal, or other acts pertaining to such action or appeal may be taken, the Attorney General shall have one-half of the time required to comply with any such procedural requirement of the court (including any extension of such time granted by the court) for the purpose of commencing, defending, or intervening in the civil action pursuant to paragraph (1) or for the purpose of refusing to appeal or file a petition for writ of certiorari and the written notification or failing to take any action pursuant to paragraph 3(A)(ii).

(5) The provisions of this subsection shall apply notwithstanding chapter 31 of title 28, or any other provision of law.

(b) Certification by Commission to Attorney General for criminal proceedings

Whenever the Commission has reason to believe that any person, partnership, or corporation is liable for a criminal penalty under this subchapter, the Commission shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate criminal proceedings to be brought.

(Sept. 26, 1914, ch. 311, § 16, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114, and amended Nov. 16, 1973, Pub. L. 93-153, title IV, § 408(g), 87 Stat. 592; Jan. 4, 1975, Pub. L. 93-637, title II, § 204(a), 88 Stat. 2199.)

AMENDMENTS

1975—Pub. L. 93-637 substituted provisions authorizing the Commission at its election to appear in court by its own name and designate its attorneys for such purpose, for provisions relating to the certification of facts by the Commission to the Attorney General who brought the appropriate proceedings, or, after compliance with section 45(m) of this title, itself brought the appropriate proceedings.

1973—Pub. L. 93-153 inserted provisions authorizing the Federal Trade Commission to itself cause appropriate proceedings to be brought after compliance with the requirements of section 45(m) of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 204(c) of Pub. L. 93-637 provided that: "The amendment and repeal made by this section [amending this section and repealing section 45(m) of this title] shall not apply to any civil action commenced before the date of enactment of this Act [Jan. 4, 1975]."

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 sections 352, 378; title 28 section 1407.

§ 57. Separability clause

If any provision of this subchapter, or the application thereof to any person, partnership, or corporation, or circumstance, is held invalid, the remainder of this subchapter, and the application of such provisions to any other person, partnership, corporation, or circumstance, shall not be affected thereby.

(Sept. 26, 1914, ch. 311, § 17, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 section 352.

§ 57a. Unfair or deceptive acts or practices rulemaking proceedings

(a) Authority of Commission to prescribe rules and general statements of policy

(1) Except as provided in subsection (i) of this section, the Commission may prescribe—

(A) interpretive rules and general statements of policy with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), and

(B) rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), except that the Commission shall not develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to this section. Rules under this subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.

(2) The Commission shall have no authority under this subchapter, other than its authority under this section, to prescribe any rule with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title). The preceding sentence shall not affect any authority of the Commission to prescribe rules (including interpretive rules), and general statements of policy, with respect to unfair methods of competition in or affecting commerce.

(b) Procedures applicable

(1) When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (A) publish a notice of proposed rulemaking stating with particularity the text of the rule, including any alternatives, which the Commission proposes to promulgate, and the reason for the proposed rule; (B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (C) provide an opportunity for an informal hearing in accordance with subsection (c) of this section; and (D) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in subsection (e)(1)(B) of this section), together with a statement of basis and purpose.

(2)(A) Prior to the publication of any notice of proposed rulemaking pursuant to paragraph (1)(A), the Commission shall publish an advance notice of proposed rulemaking in the Federal Register. Such advance notice shall—

(i) contain a brief description of the area of inquiry under consideration, the objectives which the Commission seeks to achieve, and possible regulatory alternatives under consideration by the Commission; and

(ii) invite the response of interested parties with respect to such proposed rulemaking, including any suggestions or alternative methods for achieving such objectives.

(B) The Commission shall submit such advance notice of proposed rulemaking to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives. The Commission may use such additional mechanisms as the Commission considers useful to obtain suggestions regarding the content of the area of inquiry before the publication of a general notice of proposed rulemaking under paragraph (1)(A).

(C) The Commission shall, 30 days before the publication of a notice of proposed rulemaking pursuant to paragraph (1)(A), submit such notice to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives.

(c) Informal hearing procedure

The Commission shall conduct any informal hearings required by subsection (b)(1)(C) of this section in accordance with the following procedure:

(1)(A) The Commission shall provide for the conduct of proceedings under this subsection by hearing officers who shall perform their functions in accordance with the requirements of this subsection.

(B) The officer who presides over the rulemaking proceedings shall be responsible to a chief presiding officer who shall not be responsible to any other officer or employee of the Commission. The officer who presides over the rulemaking proceeding shall make a recommended decision based upon the findings and conclusions of such officer as to all relevant and material evidence, except that such recommended decision may be made by another officer if the officer who presided over the proceeding is no longer available to the Commission.

(C) Except as required for the disposition of ex parte matters as authorized by law, no presiding officer shall consult any person or party with respect to any fact in issue unless such officer gives notice and opportunity for all parties to participate.

(2) Subject to paragraph (3) of this subsection, an interested person is entitled—

(A) to present his position orally or by documentary submission (or both), and

(B) if the Commission determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under paragraph (3)(B)) such cross-examination of persons as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to such issues.

(3) The Commission may prescribe such rules and make such rulings concerning proceedings in such hearings as may tend to avoid unnecessary costs or delay. Such rules or rulings may include (A) imposition of reasonable time limits on each interested person's oral presentations, and (B) requirements that any cross-examination to which a person may be entitled under paragraph (2) be conducted by the Commission on behalf of that person in such manner as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to disputed issues of material fact.

(4)(A) Except as provided in subparagraph (B), if a group of persons each of whom under paragraphs (2) and (3) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Commission to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings (i) limiting the representation of such interest, for such purposes, and (ii) governing the manner in which such cross-examination shall be limited.

(B) When any person who is a member of a group with respect to which the Commission has made a determination under subparagraph (A) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of subparagraph (A) the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if (i) he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (ii) the Commission determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(5) A verbatim transcript shall be taken of any oral presentation, and cross-examination, in an informal hearing to which this subsection applies. Such transcript shall be available to the public.

(d) Statement of basis and purpose accompanying rule; "Commission" defined; judicial review of amendment or repeal of rule; violation of rule

(1) The Commission's statement of basis and purpose to accompany a rule promulgated under subsection (a)(1)(B) of this section shall include (A) a statement as to the prevalence of the acts or practices treated by the rule; (B) a statement as to the manner and context in which such acts or practices are unfair or deceptive; and (C) a statement as to the economic effect of the rule, taking into account the effect on small business and consumers.

(2)(A) The term "Commission" as used in this subsection and subsections (b) and (c) of this section includes any person authorized to act in behalf of the Commission in any part of the rulemaking proceeding.

(B) A substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) of this section shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection. An exemption under subsection (g) of this section shall not be treated as an amendment or repeal of a rule.

(3) When any rule under subsection (a)(1)(B) of this section takes effect a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 45(a)(1) of this title, unless the Commission otherwise expressly provides in such rule.

(e) Judicial review; petition; jurisdiction and venue; rulemaking record; additional submissions and presentations; scope of review and relief; review by Supreme Court; additional remedies

(1)(A) Not later than 60 days after a rule is promulgated under subsection (a)(1)(B) of this section by the Commission, any interested person (including a consumer or consumer organization) may file a petition, in the United

States Court of Appeals for the District of Columbia circuit or for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose. The provisions of section 2112 of title 28 shall apply to the filing of the rulemaking record of proceedings on which the Commission based its rule and to the transfer of proceedings in the courts of appeals.

(B) For purposes of this section, the term "rulemaking record" means the rule, its statement of basis and purpose, the transcript required by subsection (c)(5) of this section, any written submissions, and any other information which the Commission considers relevant to such rule.

(2) If the petitioner or the Commission applies to the court for leave to make additional oral submissions or written presentations and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Commission, the court may order the Commission to provide additional opportunity to make such submissions and presentations. The Commission may modify or set aside its rule or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule, and the rule's statement of basis of purpose, with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(3) Upon the filing of the petition under paragraph (1) of this subsection, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief, including interim relief, as provided in such chapter. The court shall hold unlawful and set aside the rule on any ground specified in subparagraphs (A), (B), (C), or (D) of section 706(2) of title 5 (taking due account of the rule of prejudicial error), or if—

(A) the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record (as defined in paragraph (1)(B) of this subsection) taken as a whole, or

(B) the court finds that—

(i) a Commission determination under subsection (c) of this section that the petitioner is not entitled to conduct cross-examination or make rebuttal submissions, or

(ii) a Commission rule or ruling under subsection (c) of this section limiting the petitioner's cross-examination or rebuttal submissions,

has precluded disclosure of disputed material facts which was necessary for fair determination by the Commission of the rulemaking proceeding taken as a whole.

The term "evidence", as used in this paragraph, means any matter in the rulemaking record.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(5)(A) Remedies under the preceding paragraphs of this subsection are in addition to and not in lieu of any other remedies provided by law.

(B) The United States Courts of Appeal shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of a rule prescribed under subsection (a)(1)(B) of this section, if any district court of the United States would have had jurisdiction of such action but for this subparagraph. Any such action shall be brought in the United States Court of Appeals for the District of Columbia circuit, or for any circuit which includes a judicial district in which the action could have been brought but for this subparagraph.

(C) A determination, rule, or ruling of the Commission described in paragraph (3)(B)(i) or (ii) may be reviewed only in a proceeding under this subsection and only in accordance with paragraph (3)(B). Section 706(2)(E) of title 5 shall not apply to any rule promulgated under subsection (a)(1)(B) of this section. The contents and adequacy of any statement required by subsection (b)(1)(D) of this section shall not be subject to judicial review in any respect.

(f) Unfair or deceptive acts or practices by banks, savings and loan institutions, or Federal credit unions; promulgation of regulations by Board of Governors of Federal Reserve System, Federal Home Loan Bank Board, and National Credit Union Administration Board; agency enforcement and compliance proceedings; violations; power of other Federal agencies unaffected; reporting requirements

(1) In order to prevent unfair or deceptive acts or practices in or affecting commerce (including acts or practices which are unfair or deceptive to consumers) by banks or savings and loan institutions described in paragraph (3), each agency specified in paragraph (2) or (3) of this subsection shall establish a separate division of consumer affairs which shall receive and take appropriate action upon complaints with respect to such acts or practices by banks or savings and loan institutions described in paragraph (3) subject to its jurisdiction. The Board of Governors of the Federal Reserve System (with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3)) and the National Credit Union Administration Board (with respect to Federal credit unions described in paragraph (4)) shall prescribe regulations to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices. Whenever the Commission prescribes a rule under subsection (a)(1)(B) of this section, then within 60 days after such rule takes effect each such Board shall promulgate substantially similar regulations prohibiting

acts or practices of banks or savings and loan institutions described in paragraph (3), or Federal credit unions described in paragraph (4), as the case may be, which are substantially similar to those prohibited by rules of the Commission and which impose substantially similar requirements, unless (A) any such Board finds that such acts or practices of banks or savings and loan institutions described in paragraph (3), or Federal credit unions described in paragraph (4), as the case may be, are not unfair or deceptive, or (B) the Board of Governors of the Federal Reserve System finds that implementation of similar regulations with respect to banks, savings and loan institutions or Federal credit unions would seriously conflict with essential monetary and payments systems policies of such Board, and publishes any such finding, and the reasons therefor, in the Federal Register.

(2) Compliance with regulations prescribed under this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—

(A) national banks and banks operating under the code of law for the District of Columbia, by the division of consumer affairs established by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than banks referred to in subparagraph (A))[2] by the division of consumer affairs established by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)), by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation.

(3) Compliance with regulations prescribed under this subsection shall be enforced under section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464) with respect to Federal savings and loan associations, section 407 of the National Housing Act (12 U.S.C. 1730) with respect to insured institutions, and sections 6(i) and 17 of the Federal Home Loan Bank Act (12 U.S.C. 1426(i), 1437) with respect to savings and loan institutions which are members of a Federal Home Loan Bank, by a division of consumer affairs to be established by the Federal Home Loan Bank Board pursuant to the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.].

(4) Compliance with regulations prescribed under this subsection shall be enforced with respect to Federal credit unions under sections 1766 and 1786 of title 12.

(5) For the purpose of the exercise by any agency referred to in paragraph (2) of its powers under any Act referred to in that paragraph, a violation of any regulation prescribed under this subsection shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (2), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with any regulation prescribed under this subsection, any other authority conferred on it by law.

(6) The authority of the Board of Governors of the Federal Reserve System to issue regulations under this subsection does not impair the authority of any other agency designated in this subsection to make rules respecting its own procedures in enforcing compliance with regulations prescribed under this subsection.

(7) Each agency exercising authority under this subsection shall transmit to the Congress each year a detailed report on its activities under this paragraph during the preceding calendar year.

(g) Exemptions and stays from application of rules; procedures

(1) Any person to whom a rule under subsection (a)(1)(B) of this section applies may petition the Commission for an exemption from such rule.

(2) If, on its own motion or on the basis of a petition under paragraph (1), the Commission finds that the application of a rule prescribed under subsection (a)(1)(B) of this section to any person or class or[3] persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or part of such rule. Section 553 of title 5 shall apply to action under this paragraph.

(3) Neither the pendency of a proceeding under this subsection respecting an exemption from a rule, nor the pendency of judicial proceedings to review the Commission's action or failure to act under this subsection, shall stay the applicability of such rule under subsection (a)(1)(B) of this section.

(h) Compensation for attorney fees, expert witness fees, etc., incurred by persons in rulemaking proceedings; limitation on amount; establishment of small business outreach program

(1) The Commission may, pursuant to rules prescribed by it, provide compensation for reasonable attorneys fees, expert witness fees, and other costs of participating in a rulemaking proceeding under this section to any person (A) who has, or represents, an interest (i) which would not otherwise be adequately represented in such proceeding, and (ii) representation of which is necessary for a fair determination of the rulemaking proceeding taken as a whole, and (B) who is unable effectively to participate in such proceeding because such person cannot afford to pay costs of making oral presentations, conducting cross-examination, and making rebuttal submissions in such proceeding.

(2) The Commission shall reserve an amount equal to 25 percent of the amount appropriated for the payment of compensation under this subsection for any fiscal year for use in accordance with this paragraph. Such reserved amount shall be available solely for the payment of compensation to persons who either (A) would be regulated by the proposed rule in-

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[2] So in original. Probably should be followed by a comma.

[3] So in original. Probably should be "of".

volved; or (B) represent persons who would be so regulated. Any portion of such reserved amount which is not used for the payment of compensation to such persons under this paragraph shall revert to the Treasury of the United States.

(3) The aggegate amount of compensation paid to all persons in any fiscal year under this subsection may not exceed $1,000,000.

(4) The Commission, in connection with the administration of this subsection pursuant to rules prescribed by the Commission under paragraph (1), shall establish a small business outreach program. Such program shall—

(A) solicit public comment from small businesses whose views otherwise would not be adequately represented, in order to ensure a fair determination in rulemaking proceedings under this section; and

(B) encourage the participation of small businesses in the compensation program administered by the Commission under this subsection by disseminating to small businesses information which explains the procedures and requirements applicable to the receipt of compensation under such program.

(i) Restriction on rulemaking authority of Commission respecting children's advertising proceedings pending on May 28, 1980

The Commission shall not have any authority to promulgate any rule in the children's advertising proceeding pending on May 28, 1980, or in any substantially similar proceeding on the basis of a determination by the Commission that such advertising constitutes an unfair act or practice in or affecting commerce.

(j) Meetings with outside parties

(1) For purposes of this subsection, the term "outside party" means any person other than (A) a Commissioner; (B) an officer or employee of the Commission; or (C) any person who has entered into a contract or any other agreement or arrangement with the Commission to provide any goods or services (including consulting services) to the Commission.

(2) Not later than 60 days after May 28, 1980, the Commission shall publish a proposed rule, and not later than 180 days after May 28, 1980, the Commission shall promulgate a final rule, which shall authorize the Commission or any Commissioner to meet with any outside party concerning any rulemaking proceeding of the Commission. Such rule shall provide that—

(A) notice of any such meeting shall be included in any weekly calendar prepared by the Commission; and

(B) a verbatim record or a summary of any such meeting, or of any communication relating to any such meeting, shall be kept, made available to the public, and included in the rulemaking record.

(k) Communications by investigative personnel with staff of Commission concerning matters outside rulemaking record prohibited

Not later than 60 days after May 28, 1980, the Commission shall publish a proposed rule, and not later than 180 days after May 28, 1980, the Commission shall promulgate a final rule, which shall prohibit any officer, employee, or agent of the Commission with any investigative responsibility or other responsibility relating to any rulemaking proceeding within any operating bureau of the Commission, from communicating or causing to be communicated to any Commissioner or to the personal staff of any Commissioner any fact which is relevant to the merits of such proceeding and which is not on the rulemaking record of such proceeding, unless such communication is made available to the public and is included in the rulemaking record. The provisions of this subsection shall not apply to any communication to the extent such communication is required for the disposition of ex parte matters as authorized by law.

(Sept. 26, 1914, ch. 311, § 18, as added Jan. 4, 1975, Pub. L. 93-637, title II, § 202(a), 88 Stat. 2193, and amended July 23, 1979, Pub. L. 96-37, § 1(c), 93 Stat. 95; Mar. 25, 1980, H. Res. 549; Mar. 31, 1980, Pub. L. 96-221, title VI, § 610(b), 94 Stat. 174; May 28, 1980, Pub. L. 96-252, §§ 7-11(a), 12, 94 Stat. 376-379; Aug. 10, 1987, Pub.,L. 100-86, title VII, § 715(c), 101 Stat. 655.)

REFERENCES IN TEXT

The Federal Home Loan Bank Act, referred to in subsec. (f)(3), is act July 22, 1932, ch. 522, 47 Stat. 725, as amended, which is classified generally to chapter 11 (§ 1421 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1421 of Title 12 and Tables.

AMENDMENTS

1987—Subsec. (f)(1). Pub. L. 100-86, § 715(c)(1), (2), in second sentence inserted "and the National Credit Union Administration Board (with respect to Federal credit unions described in paragraph (4))" and in last sentence inserted "or Federal credit unions described in paragraph (4)," in two places, substituted "any such" for "either such", and inserted ", savings and loan institutions or Federal credit unions".

Subsec. (f)(4) to (7). Pub. L. 100-86, § 715(c)(3), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

1980—Subsec. (a)(1). Pub. L. 96-252, §§ 7, 11(a)(2), in provisions preceding subpar. (A) substituted "Except as provided in subsection (i) of this section, the" for "The" and in subpar. (B) inserted ", except that the Commission shall not develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to this section" after "section 45(a)(1) of this title)".

Subsec. (b). Pub. L. 96-252, §§ 8(a), 11(a)(3), designated existing provisions as par. (1) and cls. (1) to (4) thereof as subpars. (A) to (D) and, subpar. (A) thereof, inserted "the text of the rule, including any alternatives, which the Commission proposes to promulgate, and" after "particularity", and added par. (2).

Subsec. (c). Pub. L. 96-252, § 8(b)(1), in provisions preceding par. (1) substituted "subsection (b)(1)(C)" for "subsection (b)(3)".

Subsec. (c)(1). Pub. L. 96-252, § 9(a)(2), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 96-252, § 9(a)(1), (b)(1), redesignated former par. (1) as (2), substituted "paragraph (3)" for "paragraph (2)" and "paragraph (3)(B)" for "paragraph (2)(B)". Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 96-252, § 9(a)(1), (b)(2), redesignated former par. (2) as (3) and substituted "paragraph (2)" for "paragraph (1)". Former par. (3) redesignated (4).

Subsec. (c)(4), (5). Pub. L. 96-252, § 9(a)(1), (b)(3), redesignated former par. (3) as (4) and substituted in subpar. (A) "paragraph (2) and (3)" for "paragraphs (1) and (2)". Former par. (4) redesignated (5).

Subsec. (e). Pub. L. 96-252, §§ 8(b)(2), 9(c), substituted in par. (1)(B) "subsection (c)(5)" for "subsection (c)(4)" and in par. (5)(C) "subsection (b)(1)(D)" for "subsection (b)(4)".

Subsec. (f)(6). Pub. L. 96-221 struck out requirement that the report be made not later than every March 15.

Subsec. (h)(2). Pub. L. 96-252, § 10(b), substituted provisions reserving an amount equal to 25 percent of the amount appropriated for the payment of compensation under this subsection to be available solely for the payment of compensation to persons who either would be regulated by a proposed rule or represent persons who would be so regulated for provisions restricting the aggregate amount of compensation paid under this subsection in any fiscal year to all persons, who in rulemaking proceedings in which they receive compensation, are persons who would be regulated by the proposed rule or represent persons who would be so regulated, to an amount not in excess of 25 percent of the aggregate amount paid as compensation under this subsection.

Subsec. (h)(3). Pub. L. 96-252, § 10(a), (e), temporarily added par. (3) and redesignated former par. (3) as (4). See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (h)(4). Pub. L. 96-252, § 10(a), (c), (e), temporarily redesignated former par. (3) as (4) and substituted "$750,000" for "$1,000,000". See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (h)(5). Pub. L. 96-252, § 10(d), (e), added par. (5) to be redesignated (4) effective Sept. 30, 1983. See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (i). Pub. L. 96-252, § 11(a)(1), added subsec. (i).

Subsecs. (j), (k). Pub. L. 96-252, § 12, added subsecs. (j) and (k).

1979—Subsec. (f)(1). Pub. L. 96-37, § 1(c)(1), inserted provisions relating to savings and loan institutions and to regulations with respect to savings and loan institutions promulgated by Federal Home Loan Bank Board.

Subsec. (f)(3) to (6). Pub. L. 96-37, § 1(c)(2), added par. (3) and redesignated former pars. (3) to (5) as (4) to (6), respectively.

CHANGE OF NAME

The name of the Committee on Interstate and Foreign Commerce of the House of Representatives was changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution 549, Ninety-sixth Congress, Mar. 25, 1980.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENTS

Section 10(e) of Pub. L. 96-252 provided that: "The amendments made in subsection (a) [redesignating subsec. (h)(3) as (h)(4) and adding subsec. (h)(3)] and subsection (c) [substituting in subsec. (h)(4) "$750,000" for "$1,000,000"] are repealed, effective at the end of fiscal year 1982. Effective upon such repeal, paragraph (5) of section 18(h) of the Federal Trade Commission Act, as added by subsection (d) [subsec. (h)(5) of this section], is redesignated as paragraph (4) of section 18(h) of such Act."

Pub. L. 97-377, title I, § 101(d), Dec. 21, 1982, 96 Stat. 1866, 1870, provided in part that: "Notwithstanding any other provision of law, the provisions of sections 10 [amending this section and enacting provision set out as first paragraph of this note], 11(b) [set out as a note below], 18 [set out as a note under section 57c of this title], 20 [set out as a note under section 57c of this title] and 21 [enacting section 57a-1 of this title and enacting a provision set out as a note under section 57a-1 of this title], of the Federal Trade Commission Improvements Act of 1980 (Public Law 96-252; 94 Stat. 374) are hereby extended until the termination date set forth in section 102(c) of H.J. Res. 631 [Sept. 30, 1983] as enacted into law [Pub. L. 97-377], notwithstanding subsections 10(e) [see paragraph above] and 21(i) [set out as a note under section 57a-1 of this title] of the Federal Trade Commission Improvements Act of 1980 (Public Law 96-252; 94 Stat. 374)."

Section 11(c) of Pub. L. 96-252 provided that: "The amendments made in subsection (a) [amending provision preceding subsec. (a)(1)(A) of this section and subsec. (b)(1)(A) of this section and adding subsec. (i) of this section] shall take effect on the date of the enactment of this Act [May 28, 1980]. The children's advertising proceeding pending on the date of the enactment of this Act shall not proceed further until such time as the Commission has complied with section 18(b)(1)(A) of the Federal Trade Commission Act, as amended by subsection (a)(3) and as so redesignated in section 8(a) [subsec. (b)(1)(A) of this section]. In any such further proceeding, interested parties shall be given a reasonable opportunity to present their views in accordance with section 18(b)(1)(B) of the Federal Trade Commission Act, as so redesignated in section 8(a) [subsec. (b)(1)(B) of this section], section 18(b)(1)(C) of such Act, as so redesignated in section 8(a) [subsec. (b)(1)(C) of this section], and section 18(c) of such Act (15 U.S.C. 57a(c))."

Amendment by Pub. L. 96-252 effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

Amendment of subsec. (f)(6) by Pub. L. 96-221 effective upon the expiration of two years and six months after Mar. 31, 1980, with all regulations, forms and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96-221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

RESTRICTION ON USE OF FUNDS FOR PURPOSE OF INITIATING NEW RULEMAKING PROCEEDING

Section 11(b) of Pub. L. 96-252 prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982 (or 1983 as extended by Pub. L. 97-377, title I § 101(d), Dec. 21, 1982, 96 Stat. 1870), under section 57c of this title, for the purpose of initiating any new rulemaking proceeding under this section which was intended to result in, or which might result in, the promulgation of any rule by the Commission which prohibited or otherwise regulated any commercial advertising on the basis of a determination by the Commission that such commercial advertising constituted an unfair act or practice in or affecting commerce.

RESTRICTION ON USE OF FUNDS RESPECTING REGULATION OF FUNERAL INDUSTRY; EXCEPTION

Section 19 of Pub. L. 96-252 prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982, under section 57c of this title to issue the proposed trade regulation rule which was published in the Federal Register of Aug. 29, 1975, beginning at page 39901, and which relates to the regulation of funeral industry practices, in final form or a substantially similar proposed or final trade regulation rule unless the final rule met specific requirements and the Commission followed specific procedures.

OVERSIGHT HEARINGS WITH RESPECT TO FEDERAL TRADE COMMISSION

Section 22 of Pub. L. 96-252 required the Consumer Subcommittee of the Committee on Commerce, Science, and Transportation of the Senate to conduct an oversight hearing with respect to the Federal Trade Commission at least once during the first 6 calendar months, and at least once during the last 6 calendar months, of each of the fiscal years 1980, 1981, and 1982.

APPLICABILITY OF UNFAIR OR DECEPTIVE ACTS OR PRACTICES RULEMAKING PROCEDURES TO RULES CLASSIFYING CORPORATIONS PROMULGATED PRIOR TO JANUARY 4, 1975

Section 202(c) of Pub. L. 93-637 provided that:

"(1) The amendments made by subsections (a) and (b) of this section [enacting section 57a of this title and amending section 46(g) of this title] shall not affect the validity of any rule which was promulgated under section 6(g) of the Federal Trade Commission Act [section 46(g) of this title] prior to the date of enactment of this section [Jan. 4, 1975]. Any proposed rule under section 6(g) of such Act with respect to which presentation of data, views, and arguments was substantially completed before such date may be promulgated in the same manner and with the same validity as such rule could have been promulgated had this section not been enacted.

"(2) If a rule described in paragraph (1) of this subsection is valid and if section 18 of the Federal Trade Commission Act [section 57a of this title] would have applied to such rule had such rule been promulgated after the date of enactment of this Act, any substantive change in the rule after it has been promulgated shall be made in accordance with such section 18."

STUDY, EVALUATION, AND REPORT BY FEDERAL TRADE COMMISSION AND ADMINISTRATIVE CONFERENCE OF UNITED STATES ON UNFAIR OR DECEPTIVE ACTS OR PRACTICES; RULEMAKING PROCEDURES

Section 202(d) of Pub. L. 93-637, as amended by Pub. L. 94-299, § 2, May 29, 1976, 90 Stat. 588; Pub. L. 95-558, Nov. 1, 1978, 92 Stat. 2130, required the Federal Trade Commission and the Administrative Conference of the United States, not later than June 30, 1979, to conduct a study and submit a report to Congress on the rulemaking procedures under section 57a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45, 46, 57b-3, 2006, 2309, 2823 of this title.

§ 57a-1. Omitted

CODIFICATION

Section, Pub. L. 96-252, § 21(a)-(h), May 28, 1980, 94 Stat. 393; H. Res. 549, Mar. 25, 1980; Pub. L. 98-620, title IV, § 402(13), Nov. 8, 1984, 98 Stat. 3358, provided procedures for review by Congress of final rules promulgated by the Federal Trade Commission.

EFFECTIVE DATE; TERMINATION DATE

Section 21(i) of Pub. L. 96-252 provided that: "The provisions of this section shall take effect on the date of the enactment of this Act [May 28, 1980] and shall cease to have any force or effect after September 30, 1982."

Pub. L. 97-377, title I, § 101(d), Dec. 21, 1982, 96 Stat. 1870, provided in part that notwithstanding any other provision of law, the provisions of section 21 of the Federal Trade Commission Improvements Act of 1980 [Pub. L. 96-252], which enacted this section and enacted provisions set out as a note under this section, were extended until Sept. 30, 1983, notwithstanding section 21(i) of such Act.

§ 57b. Civil actions for violations of rules and cease and desist orders respecting unfair or deceptive acts or practices

(a) Suits by Commission against persons, partnerships, or corporations; jurisdiction; relief for dishonest or fraudulent acts

(1) If any person, partnership, or corporation violates any rule under this subchapter respecting unfair or deceptive acts or practices (other than an interpretive rule, or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of section 45(a) of this title), then the Commission may commence a civil action against such person, partnership, or corporation for relief under subsection (b) of this section in a United States district court or in any court of competent jurisdiction of a State.

(2) If any person, partnership, or corporation engages in any unfair or deceptive act or practice (within the meaning of section 45(a)(1) of this title) with respect to which the Commission has issued a final cease and desist order which is applicable to such person, partnership, or corporation, then the Commission may commence a civil action against such person, partnership, or corporation in a United States district court or in any court of competent jurisdiction of a State. If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief under subsection (b) of this section.

(b) Nature of relief available

The court in an action under subsection (a) of this section shall have jurisdiction to grant such relief as the court finds necessary to redress injury to consumers or other persons, partnerships, and corporations resulting from the rule violation or the unfair or deceptive act or practice, as the case may be. Such relief may include, but shall not be limited to, rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice, as the case may be; except that nothing in this subsection is intended to authorize the imposition of any exemplary or punitive damages.

(c) Conclusiveness of findings of Commission in cease and desist proceedings; notice of judicial proceedings to injured persons, etc.

(1) If (A) a cease and desist order issued under section 45(b) of this title has become final under section 45(g) of this title with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice, and (B) an action under this section is brought with respect to such person's, partnership's, or corporation's rule violation or act or practice, then the findings of the Commission as to the material facts in the proceeding under section 45(b) of this title with respect to such person's, partnership's, or corporation's rule violation or act or practice, shall be conclusive unless (i) the terms of such cease and desist

order expressly provide that the Commission's findings shall not be conclusive, or (ii) the order became final by reason of section 45(g)(1) of this title, in which case such finding shall be conclusive if supported by evidence.

(2) The court shall cause notice of an action under this section to be given in a manner which is reasonably calculated, under all of the circumstances, to apprise the persons, partnerships, and corporations allegedly injured by the defendant's rule violation or act or practice of the pendency of such action. Such notice may, in the discretion of the court, be given by publication.

(d) Time for bringing of actions

No action may be brought by the Commission under this section more than 3 years after the rule violation to which an action under subsection (a)(1) of this section relates, or the unfair or deceptive act or practice to which an action under subsection (a)(2) of this section relates; except that if a cease and desist order with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice has become final and such order was issued in a proceeding under section 45(b) of this title which was commenced not later than 3 years after the rule violation or act or practice occurred, a civil action may be commenced under this section against such person, partnership, or corporation at any time before the expiration of one year after such order becomes final.

(e) Availability of additional Federal or State remedies; other authority of Commission unaffected

Remedies provided in this section are in addition to, and not in lieu of, any other remedy or right of action provided by State or Federal law. Nothing in this section shall be construed to affect any authority of the Commission under any other provision of law.

(Sept. 26, 1914, ch. 311, § 19, as added Jan. 4, 1975, Pub. L. 93-637, title II, § 206(a), 88 Stat. 2201.)

EFFECTIVE DATE

Section 206(b) of Pub. L. 93-637 provided that: "The amendment made by subsection (a) of this section [enacting this section] shall not apply to—

"(1) any violation of a rule to the extent that such violation occurred before the date of enactment of this Act [Jan. 4, 1975], or

"(2) any act or practice with respect to which the Commission issues a cease-and-desist order, to the extent that such act or practice occurred before the date of enactment of this Act [Jan. 4, 1975], unless such order was issued after such date and the person, partnership or corporation against whom such an order was issued had been notified in the complaint, or in the notice or order attached thereto, that consumer redress may be sought."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 56 of this title; title 21 section 378.

§ 57b-1. Civil investigative demands

(a) Definitions

For purposes of this section:

(1) The terms "civil investigative demand" and "demand" mean any demand issued by the commission under subsection (c)(1) of this section.

(2) The term "Commission investigation" means any inquiry conducted by a Commission investigator for the purpose of ascertaining whether any person is or has been engaged in any unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title).

(3) The term "Commission investigator" means any attorney or investigator employed by the Commission who is charged with the duty of enforcing or carrying into effect any provisions relating to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title).

(4) The term "custodian" means the custodian or any deputy custodian designated under section 57b-2(b)(2)(A) of this title.

(5) The term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document.

(6) The term "person" means any natural person, partnership, corporation, association, or other legal entity, including any person acting under color or authority of State law.

(7) The term "violation" means any act or omission constituting an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 45(a)(1) of this title).

(b) Actions conducted by Commission respecting unfair or deceptive acts or practices in or affecting commerce

For the purpose of investigations performed pursuant to this section with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title); all actions of the Commission taken under section 46 and section 49 of this title shall be conducted pursuant to subsection (c) of this section.

(c) Issuance of demand; contents; service; verified return; sworn certificate; answers; taking of oral testimony

(1) Whenever the Commission has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), the Commission may, before the institution of any proceedings under this subchapter, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to file written reports or answers to questions, to give oral testimony concerning documentary material or other information, or to furnish any combination of such material, answers, or testimony.

(2) Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(5) Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Commission investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(6)(A) Any civil investigative demand may be served by any Commission investigator at any place within the territorial jurisdiction of any court of the United States.

(B) Any such demand or any enforcement petition filed under this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation.

(C) To the extent that the courts of the United States have authority to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(7) Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering a duly executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of such partnership, corporation, association, or other legal entity, or to any agent of such partnership, corporation, association, or other legal entity authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or other legal entity;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or other legal entity to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or other legal entity at its principal office or place of business.

(8) Service of any civil investigative demand or of any enforcement petition filed under this section may be made upon any natural person by—

(A) delivering a duly executed copy of such demand or petition to the person to be served; or

(B) depositing a duly executed copy in the United States mails by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(9) A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(11) Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(12)(A) Any Commission investigator before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. After the testimony is fully transcribed, the Commission investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) Any Commission investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, his attorney, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(C) The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Commission investigator before whom the oral testimony of such person is to be taken and such person.

(D)(i) Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(ii) Such person or attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not himself or through his attorney otherwise interrupt the oral examination. If such person refuses to answer any question, the Commission may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

(iii) If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18.

(E)(i) After the testimony of any witness is fully transcribed, the Commission investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript. The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Commission investigator with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign.

(ii) If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the Commission investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) The Commission investigator shall certify on the transcript that the witness was duly sworn by him and that the transcript is a true record of the testimony given by the witness, and the Commission investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) The Commission investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcription) to the witness only, except that the Commission may for good cause limit such witness to inspection of the official transcript of his testimony.

(H) Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) Procedures for demand material

Materials received as a result of a civil investigative demand shall be subject to the procedures established in section 57b-2 of this title.

(e) Petition for enforcement

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section. All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) Petition for order modifying or setting aside demand

(1) Not later than 20 days after the service of any civil investigative demand upon any person under subsection (c) of this section, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Commission investigator named in the demand, such person may file with the Commission a petition for an order by the Commission modifying or setting aside the demand.

(2) The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the Commission, shall not run during the pendency of such petition at the Commission, except that such person shall comply with any portions of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) Custodial control of documentary material, reports, etc.

At any time during which any custodian is in custody or control of any documentary material, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section or section 57b-2 of this title.

(h) Jurisdiction of court

Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of such court.

(i) Commission authority to issue subpoenas or make demand for information

Notwithstanding any other provision of law, the Commission shall have no authority to issue a subpoena or make a demand for information, under authority of this subchapter or any other provision of law, unless such subpoena or demand for information is signed by a Commissioner acting pursuant to a Commission resolution. The Commission shall not delegate the power conferred by this section to sign subpoenas or demands for information to any other person.

(j) Applicability of this section

The provisions of this section shall not—

(1) apply to any proceeding under section 45(b) of this title; or

(2) apply to or affect the jurisdiction, duties, or powers of any agency of the Federal Government, other than the Commission, regardless of whether such jurisdiction, duties, or powers are derived in whole or in part, by reference to this subchapter.

(Sept. 26, 1914, ch. 311, § 20, as added May 28, 1980, Pub. L. 96-252, § 13, 94 Stat. 380.)

EFFECTIVE DATE

Section effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 57b-2 of this title; title 44 section 3518.

§ 57b-2. Confidentiality

(a) Definitions

For purposes of this section:

(1) The term "material" means documentary material, written reports or answers to questions, and transcripts of oral testimony.

(2) The term "Federal agency" has the meaning given it in section 552(e)[4] of title 5.

(b) Procedures respecting documents or transcripts of oral testimony received pursuant to compulsory process or investigation

(1) With respect to any document or transcript of oral testimony received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, the procedures established in paragraph (2) through paragraph (7) shall apply.

(2)(A) The Commission shall designate a duly authorized agent to serve as custodian of documentary material, or written reports or answers to questions, and transcripts of oral testimony, and such additional duly authorized agents as the Commission shall determine from time to time to be necessary to serve as deputies to the custodian.

(B) Any person upon whom any demand for the production of documentary material has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated in such demand at the principal place of business of such person (or at such other place as such custodian and such person thereafter may agree or prescribe in writing or as the court may direct pursuant to section 57b-1(h) of this title) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). Such person may upon written agreement between such person and the custodian substitute copies for originals of all or any part of such material.

(3)(A) The custodian to whom any documentary material, written reports or answers to questions, and transcripts of oral testimony are delivered shall take physical possession of such material, reports or answers, and transcripts, and shall be responsible for the use made of such material, reports or answers, and transcripts, and for the return of material, pursuant to the requirements of this section.

(B) The custodian may prepare such copies of the documentary material, written reports or answers to questions, and transcripts of oral testimony as may be required for official use by any duly authorized officer or employee of the Commission under regulations which shall be promulgated by the Commission. Notwithstanding subparagraph (C), such material and transcripts may be used by any such officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, reports or answers to questions, and transcripts of oral testimony shall be available for examination by any individual other than a duly authorized officer or employee of the Commission without the consent of the person who produced the material or transcripts. Nothing in this section is intended to prevent disclosure to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider.

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[4] See References in Text note below.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Commission shall prescribe—

(i) documentary material or written reports shall be available for examination by the person who produced the material, or by any duly authorized representative of such person; and

(ii) answers to questions in writing and transcripts of oral testimony shall be available for examination by the person who produced the testimony or by his attorney.

(4) Whenever the Commission has instituted a proceeding against a person, partnership, or corporation, the custodian may deliver to any officer or employee of the Commission documentary material, written reports or answers to questions, and transcripts of oral testimony for official use in connection with such proceeding. Upon the completion of the proceeding, the officer or employee shall return to the custodian any such material so delivered which has not been received into the record of the proceeding.

(5) If any documentary material, written reports or answers to questions, and transcripts of oral testimony have been produced in the course of any investigation by any person pursuant to compulsory process and—

(A) any proceeding arising out of the investigation has been completed; or

(B) no proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all such material and other information assembled in the course of the investigation;

then the custodian shall, upon written request of the person who produced the material, return to the person any such material which has not been received into the record of any such proceeding (other than copies of such material made by the custodian pursuant to paragraph (3)(B)).

(6) The custodian of any documentary material, written reports or answers to questions, and transcripts of oral testimony may deliver to any officers or employees of appropriate Federal law enforcement agencies, in response to a written request, copies of such material for use in connection with an investigation or proceeding under the jurisdiction of any such agency. Such materials shall not be made available to any such agency until the custodian received certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. Such documentary material, written reports or answers to questions, and transcripts of oral testimony may be used by any officer or employee of such agency only in such manner and subject to such conditions as apply to the Commission under this section. The custodian may make such materials available to any State law enforcement agency upon the prior certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes.

(7) In the event of the death, disability, or separation from service in the Commission of the custodian of any documentary material, written reports or answers to questions, and transcripts of oral testimony produced under any demand issued under this subchapter, or the official relief of the custodian from responsibility for the custody and control of such material, the Commission promptly shall—

(A) designate under paragraph (2)(A) another duly authorized agent to serve as custodian of such material; and

(B) transmit in writing to the person who produced the material or testimony notice as to the identity and address of the successor so designated.

Any successor designated under paragraph (2)(A) as a result of the requirements of this paragraph shall have (with regard to the material involved) all duties and responsibilities imposed by this section upon his predecessor in office with regard to such material, except that he shall not be held responsible for any default or derelection which occurred before his designation.

(c) Information considered confidential

(1) All information reported to or otherwise obtained by the Commission which is not subject to the requirements of subsection (b) of this section shall be considered confidential when so marked by the person supplying the information and shall not be disclosed, except in accordance with the procedures established in paragraph (2) and paragraph (3).

(2) If the Commission determines that a document marked confidential by the person supplying it may be disclosed because it is not a trade secret or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 46(f) of this title, then the Commission shall notify such person in writing that the Commission intends to disclose the document at a date not less than 10 days after the date of receipt of notification.

(3) Any person receiving such notification may, if he believes disclosure of the document would cause disclosure of a trade secret, or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 46(f) of this title, before the date set for release of the document, bring an action in the district court of the United States for the district within which the documents are located or in the United States District Court for the District of Columbia to restrain disclosure of the document. Any person receiving such notification may file with the appropriate district court or court of appeals of the United States, as appropriate, an application for a stay of disclosure. The documents shall not be disclosed until the court has ruled on the application for a stay.

(d) Particular disclosures allowed

(1) The provisions of subsection (c) of this section shall not be construed to prohibit—

(A) the disclosure of information to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider;

(B) the disclosure of the results of any investigation or study carried out or prepared by the Commission, except that no information shall be identified nor shall information be disclosed in such a manner as to disclose a trade secret of any person supplying the trade secret, or to disclose any commercial or financial information which is obtained from any person and which is privileged or confidential;

(C) the disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party; or

(D) the disclosure to a Federal agency of disaggregated information obtained in accordance with section 3512 of title 44, except that the recipient agency shall use such disaggregated information for economic, statistical, or policymaking purposes only, and shall not disclose such information in an individually identifiable form.

(2) Any disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party shall be governed by the rules of the Commission for adjudicative proceedings or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

(e) Effect on other statutory provisions limiting disclosure

Nothing in this section shall supersede any statutory provision which expressly prohibits or limits particular disclosures by the Commission, or which authorizes disclosures to any other Federal agency.

(f) Exemption from disclosure

Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this subchapter or which is provided voluntarily in place of such compulsory process shall be exempt from disclosure under section 552 of title 5.

(Sept. 26, 1914, ch. 311, § 21, as added May 28, 1980, Pub. L. 96-252, § 14, 94 Stat. 385.)

REFERENCES IN TEXT

Section 552(e) of title 5, referred to in subsec. (a)(2), was redesignated section 552(f) of Title 5, Government Organization and Employees, by section 1802(b) of Pub. L. 99-570.

EFFECTIVE DATE

Section effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 57b-1 of this title.

§ 57b-3. Rulemaking process

(a) Definitions

For purposes of this section:

(1) The term "rule" means any rule promulgated by the Commission under section 46 or section 57a of this title, except that such term does not include interpretive rules, rules involving Commission management or personnel, general statements of policy, or rules relating to Commission organization, procedure, or practice. Such term does not include any amendment to a rule unless the Commission—

(A) estimates that such amendment will have an annual effect on the national economy of $100,000,000 or more;

(B) estimates that such amendment will cause a substantial change in the cost or price of goods or services which are used extensively by particular industries, which are supplied extensively in particular geographic regions, or which are acquired in significant quantities by the Federal Government, or by State or local governments; or

(C) otherwise determines that such amendment will have a significant impact upon persons subject to regulation under such amendment and upon consumers.

(2) The term "rulemaking" means any Commission process for formulating or amending a rule.

(b) Notice of proposed rulemaking; regulatory analysis; contents; issuance

(1) In any case in which the Commission publishes notice of a proposed rulemaking, the Commission shall issue a preliminary regulatory analysis relating to the proposed rule involved. Each preliminary regulatory analysis shall contain—

(A) a concise statement of the need for, and the objectives of, the proposed rule;

(B) a description of any reasonable alternatives to the proposed rule which may accomplish the stated objective of the rule in a manner consistent with applicable law; and

(C) for the proposed rule, and for each of the alternatives described in the analysis, a preliminary analysis of the projected benefits and any adverse economic effects and any other effects, and of the effectiveness of the proposed rule and each alternative in meeting the stated objectives of the proposed rule.

(2) In any case in which the Commission promulgates a final rule, the Commission shall issue a final regulatory analysis relating to the final rule. Each final regulatory analysis shall contain—

(A) a concise statement of the need for, and the objectives of, the final rule;

(B) a description of any alternatives to the final rule which were considered by the Commission;

(C) an analysis of the projected benefits and any adverse economic effects and any other effects of the final rule;

(D) an explanation of the reasons for the determination of the Commission that the final rule will attain its objectives in a manner consistent with applicable law and the reasons the particular alternative was chosen; and

(E) a summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

(3)(A) In order to avoid duplication or waste, the Commission is authorized to—

(i) consider a series of closely related rules as one rule for purposes of this subsection; and

(ii) whenever appropriate, incorporate any data or analysis contained in a regulatory analysis issued under this subsection in the statement of basis and purpose to accompany any rule promulgated under section 57a(a)(1)(B) of this title, and incorporate by reference in any preliminary or final regulatory analysis information contained in a notice of proposed rulemaking or a statement of basis and purpose.

(B) The Commission shall include, in each notice of proposed rulemaking and in each publication of a final rule, a statement of the manner in which the public may obtain copies of the preliminary and final regulatory analyses. The Commission may charge a reasonable fee for the copying and mailing of regulatory analyses. The regulatory analyses shall be furnished without charge or at a reduced charge if the Commission determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public.

(4) The Commission is authorized to delay the completion of any of the requirements established in this subsection by publishing in the Federal Register, not later than the date of publication of the final rule involved, a finding that the final rule is being promulgated in response to an emergency which makes timely compliance with the provisions of this subsection impracticable. Such publication shall include a statement of the reasons for such finding.

(5) The requirements of this subsection shall not be construed to alter in any manner the substantive standards applicable to any action by the Commission, or the procedural standards otherwise applicable to such action.

(c) Judicial review

(1) The contents and adequacy of any regulatory analysis prepared or issued by the Commission under this section, including the adequacy of any procedure involved in such preparation or issuance, shall not be subject to any judicial review in any court, except that a court, upon review of a rule pursuant to section 57a(e) of this title, may set aside such rule if the Commission has failed entirely to prepare a regulatory analysis.

(2) Except as specified in paragraph (1), no Commission action may be invalidated, remanded, or otherwise affected by any court on account of any failure to comply with the requirements of this section.

(3) The provisions of this subsection do not alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(d) Regulatory agenda; contents; publication dates in Federal Register

(1) The Commission shall publish at least semiannually a regulatory agenda. Each regulatory agenda shall contain a list of rules which the Commission intends to propose or promulgate during the 12-month period following the publication of the agenda. On the first Monday in October of each year, the Commission shall publish in the Federal Register a schedule showing the dates during the current fiscal year on which the semiannual regulatory agenda of the Commission will be published.

(2) For each rule listed in a regulatory agenda, the Commission shall—

(A) describe the rule;

(B) state the objectives of and the legal basis for the rule; and

(C) specify any dates established or anticipated by the Commission for taking action, including dates for advance notice of proposed rulemaking, notices of proposed rulemaking, and final action by the Commission.

(3) Each regulatory agenda shall state the name, office address, and office telephone number of the Commission officer or employee responsible for responding to any inquiry relating to each rule insted.

(4) The Commission shall not propose or promulgate a rule which was not listed on a regulatory agenda unless the Commission publishes with the rule an explanation of the reasons the rule was omitted from such agenda.

(Sept. 26, 1914, ch. 311, § 22, as added May 28, 1980, Pub. L. 96-252, § 15, 94 Stat. 388.)

EFFECTIVE DATE

Section effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

§ 57b-4. Good faith reliance on actions of Board of Governors

(a) "Board of Governors" defined

For purposes of this section, the term "Board of Governors' means the Board of Governors" of the Federal Reserve System.

(b) Use as defense

Notwithstanding any other provision of law, if—

(1) any person, partnership, or corporation engages in any conduct or practice which allegedly constitutes a violation of any Federal law with respect to which the Board of Gov-

ernors of the Federal Reserve System has rulemaking authority; and

(2) such person, partnership, or corporation engaged in such conduct or practice in good faith reliance upon, and in conformity with, any rule, regulation, statement of interpretation, or statement of approval prescribed or issued by the Board of Governors under such Federal law;

then such good faith reliance shall constitute a defense in any administrative or judicial proceeding commenced against such person, partnership, or corporation by the Commission under this subchapter or in any administrative or judicial proceeding commenced against such person, partnership, or corporation by the Attorney General of the United States, upon request made by the Commission, under any provision of law.

(c) Applicability of subsection (b)

The provisions of subsection (b) of this section shall apply regardless of whether any rule, regulation, statement of interpretation, or statement of approval prescribed or issued by the Board of Governors is amended, rescinded, or held to be invalid by judicial authority or any other authority after a person, partnership, or corporation has engaged in any conduct or practice in good faith reliance upon, and in conformity with, such rule, regulation, statement of interpretation, or statement of approval.

(d) Request for issuance of statement or interpretation concerning conduct or practice

If, in any case in which—

(1) the Board of Governors has rulemaking authority with respect to any Federal law; and

(2) the Commission is authorized to enforce the requirements of such Federal law;

any person, partnership, or corporation submits a request to the Board of Governors for the issuance of any statement of interpretation or statement of approval relating to any conduct or practice of such person, partnership, or corporation which may be subject to the requirements of such Federal law, then the Board of Governors shall dispose of such request as soon as practicable after the receipt of such.

(Sept. 26, 1914, ch. 311, § 23, as added May 28, 1980, Pub. L. 96-252, § 16, 94 Stat. 390.)

EFFECTIVE DATE

Section effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

§ 57c. Authorization of appropriations

There are authorized to be appropriated to carry out the functions, powers, and duties of the Federal Trade Commission not to exceed $42,000,000 for the fiscal year ending June 30, 1975; not to exceed $47,091,000 for the fiscal year ending June 30, 1976; not to exceed $50,000,000 for the fiscal year ending in 1977; not to exceed $70,000,000 for the fiscal year ending September 30, 1980; not to exceed $75,000,000 for the fiscal year ending September 30, 1981; and not to exceed $80,000,000 for the fiscal year ending September 30, 1982.

(Sept. 26, 1914, ch. 311, § 24, formerly § 20, as added Jan. 4, 1975, Pub. L. 93-367, title II, § 207, 88 Stat. 2203, and amended May 29, 1976, Pub. L. 94-299, § 1, 90 Stat. 588, renumbered and amended May 28, 1980, Pub. L. 96-252, §§ 13, 17, 94 Stat. 380, 391.)

AMENDMENTS

1980—Pub. L. 96-252, § 17, substituted "1977; not to exceed $70,000,000 for the fiscal year ending September 30, 1980; not to exceed $75,000,000 for the fiscal year ending September 30, 1981; and not to exceed $80,000,000 for the fiscal year ending September 30, 1982" for "1977. For fiscal years ending after 1977, there may be appropriated to carry out such functions, powers, and duties, only such sums as the Congress may hereafter authorize by law".

1976—Pub. L. 94-299 substituted "$47,091,000" for "$46,000,000".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-252 effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as a note under section 45 of this title.

RESTRICTION ON USE OF FUNDS TO CANCEL REGISTRATION OF TRADEMARKS

Section 18 of Pub. L. 96-252 prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982 (or 1983 as extended by Pub. L. 97-377, title I § 101(d), Dec. 21, 1982, 96 Stat. 1870), under this section, for the purpose of taking any action under 15 U.S.C. 1064 with respect to the cancellation of the registration of any mark on the ground that such mark has become the common descriptive name of an article or substance.

RESTRICTION ON USE OF FUNDS RESPECTING STUDY, INVESTIGATION, OR PROSECUTION OF ANY AGRICULTURAL COOPERATIVE OR STUDY OR INVESTIGATION OF ANY AGRICULTURAL MARKETING ORDERS

Section 20 of Pub. L. 96-252 prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982 (or 1983 as extended by Pub. L. 97-377, title I § 101(d), Dec. 21, 1982, 96 Stat. 1870), under this section, for the purpose of conducting any study, investigation, or prosecution of any agricultural cooperative for any conduct which, because of the provisions of the Capper-Volstead Act (7 U.S.C. 291 et seq.), was not a violation of any Federal antitrust Act or this subchapter or for the purpose of conducting any study or investigation of any agricultural marketing orders.

§ 58. Short title

This subchapter may be cited as the "Federal Trade Commission Act."

(Sept. 26, 1914, ch. 311, § 25, formerly § 18, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114, renumbered § 21, Jan. 4, 1975, Pub. L. 93-637, title II, § 202(a), 88 Stat. 2193, renumbered § 25, May 28, 1980, Pub. L. 96-252, § 13, 94 Stat. 380.)

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96-252 provided that "This Act [enacting sections 57a-1 and 57b-1 to 57b-4 of this title, amending sections 45, 46, 50, 57a, 57c, and 58 of this title, and enacting provisions set out as notes under sections 45, 46, 57a, 57a-1, and 57c of this title] may be cited as the 'Federal Trade Commission Improvements Act of 1980'."